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no. 1

STATE OF NEW JERSEY

SOCIAL SECURITY COMMISSION

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Report No. 1

ANALYSIS OF
FEDERAL SOCIAL SECURITY ACT

RECOMMENDATIONS TO THE NEW JERSEY LEGISLATURE
WITH RESPECT TO
OLD AGE ASSISTANCE
AID TO DEPENDENT AND CRIPPLED CHILDREN
PUBLIC HEALTH, MATERNAL AND CHILD HEALTH
AID TO THE BLIND

JANUARY, 1936

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1936

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MEMBERS OF THE COMMISSION

Harry L. Derby, *Chairman,*
Montclair

Mrs. Elizabeth Harris, *Vice Chairman,*
Glen Ridge

William J. Ellis, *Secretary,*
Trenton

Senator John C. Barbour,
Clifton

Senator Blase Cole, M. D.,
Newton

Senator Robert C. Hendrickson,
Woodbury

Assemblyman Marcus W. Newcomb, M. D.,
Browns Mills

Assemblyman Dayton D. McKean,
Princeton

Assemblyman Henry Young, Jr.,
Newark

Dr. Robert P. Fischelis,
Trenton

Frederick Snow Kellogg,
Montclair

Vincent J. Murphy,
Newark

John J. Toohey,
Jersey City

John Lemp, *Assistant Secretary,*
New Jersey Social Security Commission

3 Apr 36 [illegible] no 1 1936 [illegible]

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LETTER OF TRANSMITTAL

To the Honorable Harold G. Hoffman, Governor of New Jersey, and to the Senate and General Assembly of the State of New Jersey:

This Commission transmits herewith the attached Preliminary Report of its investigation and recommendations.

The Commission is unanimous in believing that the changes we have recommended in the Welfare Laws for New Jersey are desirable and should be given full consideration by the Legislature. May I point out to you, however, that our Commission was not charged with the responsibility of investigating the financial affairs of the State and its ability to assume any additional expense incidental to the carrying out of this program.

The Commission realizes that the Federal Government has assumed entire jurisdiction over the Old Age Benefit Title of the Federal Act. Nevertheless, the majority of the Commission believe that the excessive reserves contemplated under the Federal Law will result to the detriment of our people. These reserves will not be built up by an actuarial determination, but on an arbitrary basis which will result in the accumulation—it is estimated—of an amount far in excess of the present National Debt. The excessive revenues collected may lead to extravagant and wasteful expenditures in order to set up the debt necessary for the reserve. The temptation to squander public funds is almost irresistible when surpluses are available. Although we fundamentally oppose large reserves, we are of the opinion that reserves of manageable proportions are a proper mechanism in a long range attack upon the problem of cyclical unemployment and mounting old age dependency.

The Commission's study of the Unemployment Compensation section of the Federal Act convinces the majority of its members that the plan outlined is unsound. We are also advised that there is grave doubt as to its constitutionality. Therefore, we believe that the State of New Jersey would not be warranted in conforming its law to the Federal Act in this particular.

We are of the opinion, however, that an Unemployment Insurance plan established on a sound, economic and just basis to the employers and employees of New Jersey should be presented, and our efforts will be directed toward the consummation of such recommendations.

Although the time elapsed since the appointment of our Commission has been inadequate for a complete study of the subject, we realize the tremendous task involved in our program. It is our purpose to safeguard fully the interests of all our workers, and to consider the great desirability of stabilizing employment and encouraging industry to this end.

We are continuing our study of this subject and shall endeavor to recommend to the Legislature a Law which will conform to the Constitution of the United States and of New Jersey and, at the same time, rest on a sound financial base to meet the needs of the people of our State.

Further report will be made to you when our investigation has progressed sufficiently to result in further recommendations.

I have the honor to remain,

Very respectfully yours,

HARRY L. DERBY,
Chairman

MAJORITY REPORT TO THE LEGISLATURE OF THE STATE OF NEW JERSEY BY THE COMMISSION ON SOCIAL SECURITY APPOINTED IN PURSUANCE OF JOINT RESOLUTION NO. 7 AS AMENDED BY JOINT RESOLUTION NO. 17 OF THE 1935 LEGISLATIVE SESSION

CHAPTER I

Organization and Methods

To the Honorable the Legislature of the State of New Jersey:

The New Jersey Social Security Commission reports as follows:

Three members of the Commission, namely, Hon. John C. Barbour, Senator from Passaic; Hon. Blase Cole, Senator from Sussex; and Hon. S. Rusling Leap, Senator from Salem, who resigned in December, 1935, and was succeeded by Hon. Robert C. Hendrickson, Senator from Gloucester, were appointed by the Hon. Horace G. Prall, President of the Senate. Three members of the Commission, namely, Hon. Dayton D. McKean, Hon. Marcus W. Newcomb and Hon. Henry Young, Jr., were appointed by Hon. Lester H. Clee, Speaker of the House of Assembly. Seven members of the Commission, namely, Mr. Harry L. Derby, Dr. Robert P. Fischelis, Hon. John J. Toohey, Hon. William J. Ellis, Hon. Elizabeth Harris, Mr. Vincent J. Murphy and Mr. Frederick S. Kellogg, were appointed by the Hon. Harold G. Hoffman, Governor of New Jersey.

On call of Governor Hoffman, the Commission met at Sea Girt, New Jersey, on the 13th day of August, 1935, and there organized by electing Mr. Harry L. Derby as Chairman, Mrs. Elizabeth Harris as Vice-Chairman, and Commissioner William J. Ellis as Secretary. The Commission carried forward its organization by the appointment of subcommittees and has held public hearings and has received communications from various interested persons, as more fully appears in Appendix A to this report. Total expenditures of State funds in connection with the work of this Commission to date amount to $814.11. The members of the Commission serve without compensation.

Duties of Commission*

By the third section of the Joint Resolution this Commission was

> "charged with the duty of inquiring into the subjects of unemployment insurance, old age relief, compulsory retirement annuity legislation, aid to dependent or crippled children, maternal and child welfare, public health and aid to the blind and of determining in what respects the State of New Jersey may most effectively cooperate with such Federal legislation as may be enacted."

This Commission was further charged by Section 4 of the Joint Resolution to

> "familiarize itself with the functioning of Chapter two hundred and nineteen, public laws of one thousand nine hundred and thirty-one, the old age relief statute, and amendments thereto, and to determine what changes, if any, may be advantageous."

This Commission was further

> "directed and authorized to report to any regular or special session of the Legislatures of one thousand nine hundred and thirty-five or one thousand nine hundred and thirty-six, and to cause to be introduced such bill or bills as in its judgment may be required for the proper carrying out of its objects."

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* Resolution authorizing Commission appears in Appendix D.

At the time these duties were prescribed, Congress had not yet enacted nor had the President approved the "Social Security Act." The Legislature of New Jersey, not knowing the form or contents of the Federal legislation, therefore left to this Commission the duty of "determining in what respects the State of New Jersey may most effectively co-operate."

The Legislature did not prescribe that this Commission should investigate or report upon or make recommendations in respect to the financial ability of the State of New Jersey to meet any or all of the burdens which may ensue from the adoption of any of the proposals contained in the Federal Social Security Act. That function belongs to the Legislature, and this Commission does not attempt to advise concerning its exercise. The recommendations in this report are, therefore, not based on a study of State finance. Insofar, however, as the burdens involved might directly fall upon labor, industry, or the consuming public, this Commission has felt it was within its province to advise the Legislature.

The resolution also charged the Commission with the duty of recommending to the Legislature specific solution of the various questions stated therein. The members of the Commission believe that such solutions should be not merely experimental or stop-gap, but should furnish a permanent and enduring basis for future development. They recognize that the Legislature, in creating the Commission, adopted the method of procedure utilized in the inauguration of workmen's compensation in this State. As a result of that procedure, New Jersey, although not the first State to adopt a Workmen's Compensation Law, was the first State to put in operation a plan of Workmen's Compensation which has stood the test of time. This Commission is, therefore, proceeding upon the theory that the Legislature must be satisfied that the proposals made are fundamentally sound and will furnish, without change of essentials, a foundation upon which may be placed a system that will similarly stand the test of time.

This is a preliminary report. Although *the Commission is resolved to recommend a sound New Jersey Unemployment Compensation Plan which will provide for the setting up of reserves with which to meet the impact of unemployment,* it has not reached a solution to all of the questions involved. It is continuing its studies and will continue to do so until it has found a satisfactory solution to these questions, or is otherwise directed by the Legislature.

Among the duties imposed upon this Commission was that "of determining in what respects the State of New Jersey may most effectively cooperate with such Federal legislation as may be enacted." Accordingly, the Commission has first directed its attention to the Federal Social Security Act in an endeavor to determine to what extent, if any, the solution of the questions under its consideration can be found in that Act.

THE FEDERAL SOCIAL SECURITY ACT

(1) OUTLINE

This Act was approved by the President on August 14, 1935. A copy is printed as Appendix B to this report. Section 1105 of the Act states that it may be cited as the "Social Security Act." It contains many provisions about different things. However, these provisions may be divided into two classes.

The first class of provisions have to do with immediate relief. They are based on the *present financial need* of persons to be immediately relieved. The social security contemplated in this class is gratuitous aid by Government (Federal and State) to individuals based upon *the need* of those individuals for that gratuitous relief or assistance. The following are included:

(a) Old Age Assistance (Title I of Act)
(b) Aid to Dependent Children (Title IV)
(c) Aid for Maternal and Child Welfare, also service to Crippled Children, Child Welfare Service and Vocational Rehabilitation (Title V)
(d) Public Health Work (Title VI)
(e) Aid to the Blind (Title X)

The second class of provisions are not based on either a present or future need of the individuals to be benefited. *Need is not made a condition* of receiving benefits. Nor does this class of provisions seek to remedy *existing conditions;* they are to become operative in the future. The Social Security contemplated in this class is *not gratuitous aid* by Government, either Federal or State.

The second class of provisions includes:

(a) Federal old age benefits; tax collected from payroll fund of 1937 and subsequent years, benefits first payable in 1942 (Title II and VIII).

(b) Federal-State unemployment compensation; tax collected in 1937 on basis of 1936 payrolls and similarly for subsequent years; benefits first payable in 1938, or later, dependent upon State action (Titles III and IX).

These features of the Federal Act involve a method of meeting future needs which does not require the application of the means test in the individual case. It is argued that such pension payments may meet a need, even though the means test or the financial condition of the beneficiary is not considered at the time of payment. The funds to pay for this, it would seem, are to come either out of payrolls or funds presumably available for payrolls, or out of profit, or the cost will be shifted to the consumer.

This second class of provisions, whether considered from the economic or the constitutional point of view, differ therefore in their nature from those first referred to. The fact that these two classes of provisions are joined in the same Act raises questions as to what the relation between the two classes is to be. Will the future operation of the second class (old age and unemployment benefits) tend to reduce the number of individuals who will, in the future, require governmental assistance on the basis of need, and, if so, to what extent? Are the two classes interdependent from a financial point of view to the extent that funds for carrying out the provisions of the first class are to be derived directly or indirectly from the taxes or contributions raised to finance the second class? If the provisions of the two classes are in any way interdependent, what will be the result if provisions of either class cease to be operative because of economic or constitutional impediments? How long will the provisions continue to be operative? To what extent does the federal plan offer co-operation, and will such co-operation result in unreasonable dictation by the Federal Government to our State Government? On the other hand, is there a proper division of function between State action and Federal action inherent in the Act? More specifically, should the Federal Government endeavor through the use of its taxing power to encourage the establishment of State unemployment compensation programs? Is the Federal Government correct in assuming that a contributory system of old age benefits should be established on a nation-wide basis? Answers to these questions involve considerations that will affect the conclusions and recommendations of this Commission.

(2) BACKGROUND AND ORIGINS OF THE ACT

Assistance to those in need has long been a part of every civilized society. Such assistance to the needy has been given primarily by the family. It has also been given, to a very large extent, by private individuals or organizations. It has also been given by Government and, under the American system, almost entirely by the State and subordinate agencies of the state. All such assistance has been gratuitous, that is, it has been based on the need of the individual and not upon any right of that individual to receive it.

Alongside of such private and public relief there has grown another system which on the surface appears similar, but in fact is based upon fundamentally different considerations. It is a system of pensions and deferred or adjusted compensations of various kinds. It is a system not based upon the *need* of the beneficiary; rather it recognizes a right of the beneficiary, which right arises either because of a previously existing arrangement or because justice requires a modification of a previously existing arrangement and all parties agree to such modification.

The present economic depression affected aid to the needy in two ways. First, it increased the burden of all agencies, that is, of the family, of organized and individual private charity and of public relief as administered by the States and their subdivisions. Second, it reduced the financial income of all of these agencies. The result was and is that the Federal Government is asked to assume to a degree, the resulting financial deficits.

Since financial assistance by the Federal Government required an Act of Congress, President Roosevelt, in order to determine what recommendations he should make to Congress, appointed a Committee on economic security consisting of Hon. Frances E. Perkins, Secretary of Labor (Chairman); Hon. H. Morgenthau, Jr., Secretary of the Treasury; Hon. Homer Cummings, Attorney-General; Hon. H. A. Wallace, Secretary of Agriculture, and Honorable Harry Hopkins, Federal Emergency Relief Administrator. This Committee in turn appointed a staff of which Dr. E. E. Witte, of Wisconsin, was Director. The Committee, with the assistance of many advisory committees, prepared reports and recommendations and submitted them to President Roosevelt, who in turn transmitted them to the Congress and recommended them for consideration as measures which the President deemed necessary and expedient.

(3) CONSIDERATIONS APPLICABLE TO THE ACT AS A WHOLE

(a) *Financial: Source of money*

No private individual can pay out money until he possesses it; Government, whether State or Federal, is subject to the same limitation. For all practical purposes the only means by which a government can secure money is by taxation. Borrowing is but a deferred and expensive form of taxation. Gifts to the government are of such small amount as to be negligible. Confiscation is forbidden by the Constitution of the United States and by the Constitution of New Jersey. So of all the means by which the Government may raise money in order to disburse it, we need consider only taxation. The people in the various States pay substantially all of the Federal taxes. The total of the tax monies which these people pay cannot be returned to them; a large part is used for administration and for other purposes. When it is suggested that the Federal Government will grant monies to the State, it means only that the Federal Government will return some part of what has already been taken from the people of the State. Experience has shown that the people of New Jersey have paid vast sums of money in taxation to the Federal Government which has been used in other States, and the people of New Jersey have received back but a small portion of what they have paid.

The Social Security Act provides for taxation. The basis and measure of this taxation is the payroll. It is true that some payrolls are excluded, but it is likewise true that no basis other than payrolls is included.

The revenues to be raised are for the purposes of the Act, among which are:

(1) Old Age Insurance

(2) Unemployment Compensation (frequently referred to as Unemployment Insurance).

Taxes to defray the expenditures contemplated by each will be considered separately.

(1) *Old Age Insurance:* Under the provisions of the Federal Statute, there is levied a tax upon the employer based on his payrolls, and a tax upon the employee in the form of an income tax upon his pay, both to be collected by the employer in accordance with the following schedule:

Year	Employer's Tax on Payroll	Employee's Tax on Wages*	Total Tax
1937	1 %	1 %	2 %
1938	1 %	1 %	2 %
1939	1 %	1 %	2 %
1940	1½ %	1½ %	3 %
1941	1½ %	1½ %	3 %
1942	1½ %	1½ %	3 %
1943	2 %	2 %	4 %
1944	2 %	2 %	4 %
1945	2 %	2 %	4 %
1946	2½ %	2½ %	5 %
1947	2½ %	2½ %	5 %
1948	2½ %	2½ %	5 %
1949	2½ %	2½ %	5 %
1950-thereafter	3 %	3 %	6 %

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* Wages of an individual in excess of $3,000 per year not counted.

The following groups are exempted:

(1) Agricultural labor.
(2) Domestic service in a private home.
(3) Casual labor not in the course of employer's business.
(4) Employees of the United States Government.
(5) Employees of a State or political subdivision.
(6) Employees of institutions operated for religious, charitable, scientific, etc., purposes, not operated for profit.

Old Age Insurance. Old age insurance payments are to be made under the Federal Statute in accordance with the following schedule:

Conditions to Qualify for Receipt of Old Age Benefits

(1) At least 65 years of age and not regularly employed.
(2) Not less than $2,000 total wages received after December 31, 1936, and prior to age 65.
(3) Wages were paid to applicant on some day in each of 5 years after December 31, 1936, and before age of 65.

Non-qualified individuals upon reaching age of 65 are to be paid lump sum equal to 3½% of total wages paid after December 31, 1936, and before attaining age 65.

Old Age Benefit Payments

(1) Date first payable January, 1942.

(2) The amount of the monthly benefits payable is determined as follows:

	Amount
If total wages paid beneficiary, with respect to employment after December 31, 1936, and before attainment of age of 65 years were not more than $3,000	Monthly rate of ½ of 1% of such total wages.
If such total wages were more than $3,000	Monthly rate equal to the sum of: ½ of 1% of $3,000; plus 1/12 of 1% of next $42,000; plus 1/24 of 1% of all over $45,000.

(2) *Unemployment Compensation,* (sometimes referred to as Unemployment Insurance): There is levied an increasing tax upon payrolls in accordance with the following schedule:

Year	Rate of Tax
1936	1%
1937	2%
1938	3%

Combined Old Age Insurance and Unemployment Compensation Taxes

	EMPLOYER			EMPLOYEE	COMBINED
Year	Unemployment Tax	Old Age Insurance Tax Rate	Total Tax Rate	Old Age Insurance Tax Rate	Total Tax Rate
1936	1 %		1 %		1 %
1937	2 %	1 %	3 %	1 %	4 %
1938	3 %	1 %	4 %	1 %	5 %
1939	3 %	1 %	4 %	1 %	5 %
1940	3 %	1½ %	4½ %	1½ %	6 %
1943	3 %	2 %	5 %	2 %	7 %
1946	3 %	2½ %	5½ %	2½ %	8 %
1950	3 %	3 %	6 %	3 %	9 %

The tax upon payrolls for the two purposes, namely, Old Age Insurance and Unemployment Insurance, is a direct tax upon the proportion which the cost of labor bears to the entire cost of producing a given article. It is the kind of a tax which in some cases may be passed on to the consuming public, in other cases only in part, and, in still other cases where the increased cost would result in an increase in price equivalent to a fraction of a cent, in amounts greater than the increased cost.

The tax on the income of the employees is in the nature of an income tax equivalent to three per cent of the income of all employees with incomes of $3,000 or less.

At the hearings before the Commission criticism of these taxes was advanced to the effect that inasmuch as they tend to increase the price of goods to the consumer, the tendency would be to reduce consumption and employment. On the other hand advocates of this method of taxation contended that consideration must be given to the effect of increased consumption that will follow the payments of benefits and which will tend to maintain purchasing power.

It has been argued that whatever the effect of these taxes may be on production and consumption, the taxes will not necessarily fall on the workman or consumer, but may also come out of profits to stockholders. There are many manufacturing companies making no profit. The record of the Internal Revenue Bureau shows that for the period 1926 to 1931, the average of all corporate net income was less than 5½% on invested capital.

In some concerns the invested capital is larger than the annual payroll. These are the highly mechanized industrial units. In the less highly mechanized industrial units, which are the industrial units which give the most employment in proportion to the goods turned out, the annual payroll is frequently larger than the invested capital. The Federal law makes no distinction so far as the taxes are concerned between the highly mechanized industrial unit and the less mechanized unit. The burden of the tax is heaviest where the most employment is given in proportion to the good produced. Without having a statistical basis we cannot with assurance determine how many industrial units in this State are in a position to absorb these taxes without a reduction of profit.

(b) *Financial; Purposes and Beneficiaries*

We next come to consider the purposes for which and the persons to whom this money is to be paid. The Social Security Act is ambiguous as to the application of the money to be raised by the taxes therein provided and also as to the source from which the expenditures provided in the Act are to be derived. We must, therefore, look to what took place prior to and during the enactment of the law in order to determine the intention.

This matter of intention is fully discussed in the legal opinion annexed hereto as Appendix C. Dr. E. E. Witte, Executive Director on Economic Security, in testifying before the House Ways and Means Committee stated:*

> ''The total appropriations proposed in this bill amount to $98,500,000 in the fiscal year 1936, and $218,500,000

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* Together with this report is handed the report of the President's Committee on Economic Security.

> in subsequent years. Offsetting these appropriations, will be the receipts from taxes which are imposed in connection with unemployment compensation and old-age annuities. Unemployment compensation will not involve any cost on general revenues, and for a considerable period to come the Federal grants-in-aid to States for old-age pensions can be borrowed from the amounts collected by the Federal Government through the system of compulsory old-age annuities.''

The foregoing statements, when taken in connection with the terms of the Federal Social Security Act, indicate that the monies which are to be raised by the taxing provisions of the Act may be applied to the old-age annuities, administrative costs of unemployment insurance and as grants-in-aid to the States in connection with the provisions of the Act in respect of old-age assistance. The Act, taken as an entirety, is a self-contained unit and the parts of it are not severable but are interdependent.

The revenues collected under Title VIII (Old Age Benefits) of the Act are to be deposited in the Treasury of the United States. They are to be invested exclusively by the Secretary of the Treasury. He is authorized, under the Act, to make investments in Federal securities including a special type of non-negotiable government bond issued to the fund by the Treasury. Regulations concerning the rate of interest to be obtained, which should be not less than 3%, are specified in the Act. The deposits made by the States in the ''Unemployment Trust Fund'' are likewise to be invested in Federal securities. In this case, the rate of interest on the special obligations which may be purchased will bear a rate of interest approximating the average rate of interest paid on the entire interest bearing government debt.

Since the funds derived from these sources on investment in Federal securities may be used for the general purposes of government, the working people and employers of New Jersey, in contributing toward benefits under a

State unemployment compensation system and the Federal old age insurance system, may be assisting the current financing of the Federal Government including the old age assistance grants to all States. The diversion of excessive amounts of such funds derived from worker and employer contributions to current governmental appropriation involves serious problems.

The amount of the reserves which will be accumulated through State deposits in the "Unemployment Trust Fund" is not subject to actuarial determination. It seems probable, however, that it will at times exceed two billion dollars.

It is estimated, in the report of the Senate Finance Committee, that the reserves on account of *old-age benefits alone* will be built up in accordance with the following schedule:

(In Millions of Dollars)

Fiscal year ending June 30th	Appropriation for Reserve	Interest on Reserve	Benefit Payments	Balance in Reserve
1937	255.5	0	1.9	253.7
1938	513.5	7.6	7.2	767.5
1939	518.5	23.0	14.5	1,299.5
1940	662.2	38.8	22.0	1,973.6
1941	807.2	59.2	29.7	2,810.3
1942	814.8	84.4	52.8	3,656.6
1943	970.0	109.8	94.2	4,642.1
1944	1,126.6	139.3	142.9	5,765.1
1945	1,137.0	173.0	191.2	6,883.9
1946	1,291.4	206.5	249.2	8,132.7
1947	1,447.1	243.9	314.5	9,509.2
1948	1,460.1	285.2	377.4	10,877.0
1949	1,621.1	326.3	442.1	12,382.4
1950	1,783.3	371.5	505.5	14,021.7
1955	1,861.2	615.8	887.8	22,115.7
1960	1,939.1	844.2	1,379.9	29,543.9
1965	2,016.9	1,040.9	1,844.0	35,898.5
1970	2,094.8	1,210.9	2,303.5	41,366.7
1975	2,172.7	1,341.8	2,872.1	45,368.3
1980	2,180.5	1,406.0	3,511.3	46,942.7

The financial totals which will be involved in carrying out the Federal Social Security Act are stupendous. It is argued that these revenues which would be in excess of those necessary to meet current outgo and provide an adequate contingency reserve, are apparently to be taken from the current of productive industry which would result in the reduction of production and employment. The expenditure of such revenues might, however, stimulate production. Further, the excessive revenues involved may lead to a reduction in other taxes and thus, for the time being, taxes on payrolls might be used for financing a considerable part of the normal cost of government.

This immense reserve is to be invested only in the obligations of the United States or those guaranteed by the United States, which eliminates their investment in State or municipal funds, or other securities. To the extent that Federal obligations are more secure than other types, this insures security to the fund, but concentrates the burden of credit and liquidation upon the Federal Treasury.

Problems of Excessive Reserve

The accumulation of such excessive reserve involves many serious problems of governmental finance. The excessive revenues involved may lead to extravagant and wasteful expenditure in order to set up the debt necessary for the reserve. The result will be that the excess reserves will be invested in securities, the proceeds of which will be used for public works or will be expended for operating expenses, and will be unavailable when the time comes to recall invested sums in order to pay the benefits that have become due. The temptation to squander public funds is almost irresistible when there are surpluses available. On the other hand other taxes may be reduced, contrary to sound fiscal policy. The volume of Federal securities required for deposit in the reserve may seriously deplete the financial markets of the country of those securities essential to sound banking and insurance operations. The withdrawal of this large volume of Federal securities may seriously disturb the market for other preferred securities.

To the extent which this excessive reserve must be liquidated, other problems arise. Taxes previously avoided must be initiated in order to provide the funds with which to pay benefits. Should extensive liquidation be called for in a time of depression, such taxes might prove exceptionally burdensome on the public. The liquidation of a large reserve through the sale of Federal securities might well lead to sharp reductions in the price of these securities and concomitant ill effects.

The foregoing criticisms of the financial operations involved in the Federal act are not directed against the principle of reserve accumulation in meeting the costs of benefits under a program of unemployment compensation or old age insurance. Rather they are aimed at the dangers faced in the accumulation of *excessive* reserves by the application of the rates of contribution established under Title VIII of the Social Security Act. It is believed that such excessive reserves should be avoided to prevent the untoward conditions outlined, which, among other effects, endanger the interests of the taxpayers and wage-earners of our State. The Commission is supported in this judgment by its study of the recommendations of the Committee on Economic Security upon which the Act was based and of the testimony of witnesses in the hearings before the Congressional committees which considered the legislation.

The Commission is of the belief that reserves of manageable proportions are a proper mechanism in a long range attack on the problem of cyclical unemployment and mounting old age dependency. Wherever located, reserves against a rising drain of unemployment benefits in times of depression should be in such form as to be readily liquidated without serious effects on governmental or private finance. Rather, the liquidation of such reserves should be accomplished not only with the effect of aiding the unemployed worker, but in retarding, as far as possible, the accompanying decline in business activity. In this way, sound procedure in the handling of reserves can operate to prevent unemployment rather than augment it.

PAY-AS-YOU-GO PLAN WISER

In the case of old age insurance, the Advisory Council to the Committee on Economic Security and many students of the subject have argued that the "pay-as-you-go" method of financing benefits should be followed as far as possible to avoid the dangers outlined above. They maintain that the Government with its taxing power and huge reserves of borrowing capacity is sufficiently stable to warrant setting up a plan of old age annuities which would balance outgo against income and build up reserves sufficient only to tide over the system through periods of depression—when the expected income would be sharply diminished. They further point out that this would not lay the Federal Government open to a suspicion that it was more interested in providing a means for financing current deficits over the next few years without having to submit its credit to the rating of market places, than it was in the soundness of its unemployment benefit plan. While realizing that the Federal Government has assumed entire jurisdiction over this method of meeting the old age dependency problem of the country, it is believed that the possible effects of excessive reserves upon the citizens of our State warrant this expression of caution.

FEDERAL SOCIAL SECURITY ACT CONSTITUTIONALITY

We are advised that the Federal Social Security Act is unconstitutional in certain particulars. A legal opinion discussing this matter in detail is annexed to this report (Appendix C).

DURATION OF FEDERAL SOCIAL SECURITY ACT

In considering this Act it is to be borne in mind that Section 1104 is as follows:

> "Section 1104. The right to alter, amend or repeal any provision of this Act is hereby reserved to the Congress."

This provision applies to the entire Act. It applies to both classes or provisions, namely, to those granting aid to the States for the benefit of the needy and to the other class including old age annuities and unemployment insurance. In order that the States should not establish any unalterable arrangement in regard to unemployment benefits it was provided in Section 903 (a) (6) that the State law should provide:

> "(6) All rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal such law at any time."

We recommend that legislative action be confined to provisions which the State of New Jersey is able to carry out unaided. Any legislative action which is not confined to provisions which the State of New Jersey is able to carry out unaided should provide for termination in the event that through a change of the Federal Act or through the lack of appropriations from Congress such provisions should be inoperative.

There is another feature of the situation applicable to unemployment benefits. If the State of New Jersey should pass a law whereby money raised by taxation in New Jersey is to be deposited in the Federal Treasury the question would arise as to whether this money could be recovered. There would be no legal right to recover it as against the will of any subsequent Congress. In the first place, the United States cannot be sued without its own consent, and, in the second place, the Congress has reserved to itself the right to alter, amend or repeal any provisions of the Act, and could alter, amend or repeal those provisions of the Act which provide for repayment to the States of the monies deposited in the Federal Treasury. A third consideration is the question as to whether monies may be withdrawn from the Federal Treasury (even if part of a so-called trust fund) unless specific appropriation is made by the Congress.

SPECIFIC PROVISIONS

As above indicated, the specific provisions of this Act will be considered in two classes, the first being that in which there are Federal grants-in-aid so that the State may assist the needy, and the second class which includes old-age annuities and unemployment benefits and which does not depend upon the need of the beneficiary.

The first class includes.

(a) Old age assistance (Title I of Act)
(b) Aid to dependent children (Title IV)
(c) Aid for maternal and child welfare, also service for crippled children, child welfare service and vocational rehabilitation (Title V)
(d) Public Health Work (Title VI)
(e) Aid to the blind (Title X)

In approaching these subjects, your Commission feels justified in saying that it believes that no State of the Union has a better or more efficient system for handling such problems and that the generosity of the State of New Jersey with respect to these social service activities is evidenced by the fact that exclusive of the highway budget, which is financed out of gasoline taxes and license fees, between 25 and 30 per cent of all appropriations of the State of New Jersey are used for social service work.

When we come to consider in detail conformity with the Federal program by the State of New Jersey, it will be found that the added financial burden is considerable. This raises questions of what part of the increased financial burden will be borne by the Federal Government, and of how long such part will continue to be borne. Your Commission, as stated above, feels that it should limit its legislative recommendations to such as the State of New Jersey is able to initiate and properly carry on unaided by any Federal grants.

The Commission's detailed recommendations with respect to Old Age Assistance, Aid to Dependent and Crippled Children, Public Health, Maternal and Child Health, and Aid to the Blind are presented in the following chapters.

CHAPTER 2

Old Age Assistance

Changes in existing welfare laws should be confined to such as may be warranted by actual existing needs. The Commission has resolved that it will not recommend any changes merely for the purpose of obtaining a share of any Federal funds which may be distributed under the terms of the Social Security Act. On the other hand it is realized that Federal participation, if obtainable on a basis of the deliberate policy of this State, would be helpful to the extent that the cost may thereby be spread over a broadened tax base.

Our survey of the present situation as it effects old age assistance has produced facts which may be summarized briefly as follows:

Chapter 219, P. L. 1931, is being administered by the Welfare Boards of twenty counties, under the supervision of a small staff in the State Division of Old Age Relief, Department of Institutions and Agencies.

Payments of this form of relief began in July, 1932, in sixteen of the counties, five then being unable to find the funds required to participate. These five have managed to meet the financial requirements one by one, the last of this group, Gloucester, having completed arrangements to begin payments in February, 1936.

Following is a statistical summary of the operation of the present law from July 1, 1932, to November 30, 1935:

RESULTS OF OLD AGE ASSISTANCE IN NEW JERSEY

JULY 1, 1932, THROUGH NOVEMBER 30, 1935

	1932-33	1933-34	1934-35	1935 (5 mos.)
Average No. Aided	7,648	9,608	11,559	13,978
Total Cost of Relief	$1,195,607.16	$1,545,273.57	$2,061,399.00	$1,100,839.85
State's Share, 75%	896,705.41	1,158,955.20	1,546,049.00	825,629.89
Counties' Share, 25%	298,901.75	386,318.37	515,349.00	275,209.96

It is estimated that the average number to receive relief under this law will reach about 15,000 during the remainder of the fiscal year and that the total cost of relief furnished will reach $2,763,804.

The form of relief afforded under the present statute has been satisfactory in that it has enabled aged needy persons to continue living in their own or other family homes. It has afforded assistance to a group which otherwise would have required much institutional care or poor relief of another kind. At the same time economical administration provided by the unpaid County Welfare Boards has enabled the relief per person aided to be kept at about half the monthly sum permitted by the statute, a sum which was fixed on the theory that old age relief ought to be less costly than institutional care. Administrative cost has been about 8 per cent.

It seems clear, in the light of experience in this and other States that old age assistance has become a recognized permanent method of extending public aid to that large group of aged persons who find themselves in their declining years without the means necessary to their support. Small as have been the individual sums granted they have meant the difference between security and misery. The amounts granted have been fitted carefully to the ascertained needs of each applicant.

Our examination of the present situation has brought us to the conclusion that New Jersey's Old Age Relief Law, while working well in behalf of the needy who can fulfill the stringent qualifications for eligibility, is too much restricted by the requirements as at present defined.

A person of 65 years who has no job or other means of support is just as permanently in need of care as is the person aged 70 or more. This was recognized by the Pension Survey Commission when it made its study of Old Age Relief in 1931. The uncertainties with respect to costs led to the age and residence restrictions then imposed. Costs have not reached the sums anticipated as probable. Federal aid is now available. We have, therefore, come to the conclusion that the age of eligibility for old age assistance ought to be lowered to 65 years.

We have found that the present residence requirement of fifteen years preceding date of application was inserted into the law to prevent an influx of aging persons who might hope to qualify for such aid. Since forty of the States now have such legislation, and many of these are lowering their residence requirements to meet the standard fixed in the Federal Social Security law, this requirement may well be moderated; therefore we have:

RESOLUTION No. 1

> *Resolved,* That it be the sense of this Commission that an amendment to the existing Old Age Relief statute be introduced into the Legislature reducing the age of eligibility to 65 years and the residence requirements to five years immediately preceding date of application.

It is estimated that the above resolution would have the following effect on case load and cost of relief for the fiscal year 1937:

	Age and Residence Requirements Reduced 1936-37	Present Law 1936-37
Average number aided	31,500	17,750
Cost	$5,998,860	$3,380,463

RESOLUTION No. 2

> *Resolved,* That if Federal aid is not secured the counties continue to pay 25% of the cost and the State 75%; that in any case the proportion of State to county share of the cost be in the ratio of three to one.

Should this State fail to receive Federal aid the above cost for 1937 would be shared by the State and counties as follows:

State's share	$4,749,145
Counties' share	1,249,715

RESOLUTION NO. 3

Resolved, That the change in age and residence requirements be made effective July 1, 1936, unless Federal aid is secured at an earlier date; that the report of this Commission and the revision of the Act to be submitted should be drawn in such manner that this State will comply with requirements for Federal aid; that it provide for continuing to pay old age assistance to all those who have become eligible under Federal aid in the event that Federal aid is withdrawn, but that settlement requirements for new applicants be changed back to five years instead of five years within the last nine should Federal aid be withdrawn; that in any event the age and residence requirements for old age assistance be changed, as set forth in Resolution No. 1, as of July 1, 1936.

The above change is expected to increase the average case load and cost for the fiscal year 1937 because of the change in residence requirements from five years to five years within the last nine. Estimates are:

	Settlement 5 years in 9 1936-37	Settlement 5 years 1936-37
Average case load	31,938	31,500
Total cost	$6,084,958	$5,998,860
Federal share, 50%	3,042,479	2,999,430
State's share, 75% of balance	2,281,860	2,249,574
Counties' share, 25% of balance	760,619	749,856

It is somewhat problematical as to what proportion of those who would become eligible for old age assistance under the terms of the law after it is revised as outlined in Resolutions 1-3 would be transferred from other forms of public relief.

A sampling of Emergency Relief cases indicates there are approximately 12,600* persons aged 65 and more included on the relief rolls of the State. It is to be presumed that a large proportion of these would qualify for old age assistance. On the other hand there are some of these, chiefly non-citizens, who would be unable to qualify.

In order to determine what proportion of those receiving Old Age Assistance under the existing law have been transferred from the rolls of other public relief and private relief agencies the respective County Welfare Boards were asked to analyze the new cases granted old age assistance during 1935 to determine:

(1) How many had received relief from another public agency;

(2) How many had received relief from a private charitable organization or person other than a legally responsible relative; and

(3) How many in the judgment of the Welfare Board, would have required public assistance from another source if they had been unable to qualify for old age assistance.

Tabulation of reports from seventeen counties indicates that about 39 per cent of 1935 grants actually were receiving public or private relief at the time they were accepted for old age assistance, that 55 per cent were at the end of their resources but had not applied for assistance from any other source, and that about 6 per cent received old age assistance in order to raise the standard of life to provide reasonably for health and comfort. Following is a tabular analysis of the reports received:

		%
Total new cases	4,966	100.0
From public aid	1,714	34.5
From private aid	233	4.7
Newly in need of public aid	2,738	55.1
No. aid only supplementary	281	5.7

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* "Our Neighbors in Need" and Fourth Annual Report of the New Jersey Emergency Relief Administration.

It is doubtful if the above proportion as between transfers from other agencies and intake of new cases would continue under the revisions in the law as proposed. The group 65 to 70 years now receiving public or private assistance and the group now disqualified by reason of their lack of required residence is of considerable size and their necessities are great. Therefore, it is believed that transfers from other agencies might reach 50 to 60 per cent of the new intake for old age assistance.

If such were to be the case, and the cost of care were to be substantially the same, regardless of which public agency administered, the Federal participation proposed would produce a financial result as follows:

NET GAIN TO STATE FUNDS

	—Estimates of 1936-37—	
	Costs Under Present Act	Costs with residence and age changed; 50% of new cases transfers from other agencies
Average case load	17,749	31,938
Total Est. Cost	$3,380,463	$6,084,958
Federal aid (50%)	none	3,042,479
State's share (75% of balance)	2,535,347	2,281,860
Counties' share (25% of balance)	845,116	760,619
Gross direct gain to State		$253,487
Added cost State adm.		10,000
Net direct gain to State		$243,487
Indirect Gain to State by reason of transfers from other agencies and Federal participation thereby received equals ½ cost added cases totalling $2,704,495		$1,352,247

SUGGESTED REVISIONS OF AN ADMINISTRATIVE CHARACTER

In pursuance of the Legislature's command that the Commission review the workings of the present Old Age Relief act to determine if there be need for revisions in order to improve administration the Commission recommends the following:

State Settlement vs. County Settlement

RESOLUTION No. 4

Resolved, That county settlement, so far as old age assistance is concerned, be changed from five years to one year, and that in the case of any applicant having five years' State residence within the last nine but who shall not have acquired one year settlement in a county, the State shall assume the full cost of relief granted until the applicant shall have acquired one year settlement in a county, after which the county shall assume its proportionate share of the cost.

The above resolution provides a practical and equitable division of cost as between State and counties for such applicants as may have acquired the necessary five years of State settlement without having acquired a full year of settlement in any county. This provision is necessary by reason of the language contained in Section 2 (b) 2 of the Federal Social Security Act, which reads:

"Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old age assistance and has resided therein continuously for one year immediately preceding the application."

Authority to Require Adequate Personnel of Welfare Boards—

RESOLUTION No. 5

Resolved, That Section 3 of Chapter 219, P. L. 1931, be strengthened to give the State Division of Old Age Relief authority to require adequate personnel standards for the county welfare boards with respect to both the number of employees and their qualifications and with specific power to advise and consent concerning appointments of county directors of welfare and other welfare board employees.

The above resolution was recommended to this Commission by an advisory committee composed of county directors of welfare and representatives of the State Division of Old Age Relief. It is based upon an observed need and conforms with the theory that responsibility accompanies financial participation. Since the State contributes a large share of total expense it should be in a position to see that personnel standards are adequate and should have sufficient power over selections to see that those appointed are fitted for the work.

Power to Compel Legally Responsible Relatives to Support—

Resolution No. 6

> *Resolved,* That the county directors of welfare be vested with powers necessary to bring legal action before an appropriate court of record to compel legally responsible relatives to support aged parents and grandparents when ability to support in whole or in part can be shown.

Experience gained in administering the present law indicates the necessity of the above provision. Power to be conferred on Directors of Welfare now resides with local overseers of the poor. The provision contemplated would give similar authority to summon legally responsible relatives of applicants for old age assistance before a court of record for the purpose of determining ability to perform their obligations, and, when such ability has been determined, issuing a court order for partial or full support.

Use of this power would be infrequent, but would be most salutary when legally responsible relatives able to support an applicant wilfully neglect their duties.

Broadening Powers with Respect to Care of Infirm Applicants—

RESOLUTION No. 7

> *Resolved,* That the language of Section 6, Chapter 219, P. L. 1931, be amended to read "old age assistance shall be granted in the form of cash or a check. The assistance granted under this act shall be provided for the recipient in his own or some other suitable family home, provided, however, that upon special resolution by the county welfare board, after hearing, and with approval from the State Division of Old Age Relief, such assistance may be granted outside of his own home or some other suitable family home."

The above resolution is designed to permit carefully restricted use of private or endowed institutions for the care of those feeble or ill recipients of old age assistance who have no suitable care available in their own homes or in the homes of relatives or friends but who may be cared for properly in carefully selected instances within the cost limitations of old age assistance outside of a family home.

Welfare Boards Should Be Given Corporate Identity—

RESOLUTION No. 8

> *Resolved,* That county welfare boards shall be constituted as corporate entities similar in their set-up to county park commissions, the present terms of membership to remain unchanged, with appointments to be made as at present by the respective board of freeholders.

The above resolution is based upon an observed weakness in the present law which requires the county welfare boards to transact business involving the filing of liens and releases thereof against real estate owned by old age relief recipients in the name of the board of freeholders. The present method is cumbersome and unsatisfactory. It has been held by members of the bar that it is of doubtful validity.

State Aid Grants to Welfare Boards on a Commitment Basis—

Resolution No. 9

Resolved, That the assistance granted by the State to the counties for old age relief shall be made in the form of grants in aid to the welfare boards on a commitment basis rather than as at present on a reimbursing basis.

The present plan requires the counties to budget the total cost of relief granted and the reimbursement received is credited to an account other than that of the welfare board. The proposed procedure would greatly simplify this process and would result in a bookkeeping system which would set forth the actual transactions accurately rather than on the inaccurate basis now required.

Authority to Accept and Use Federal Grants for Old Age Assistance—

Resolution No. 10

Resolved, That the revised act contain a provision specifically authorizing the State Treasurer to accept monies allocated by the Federal Government under the provisions of Title 1 of the Federal Social Security Act, to account for the same, and to expend them only for old age relief and its administration as authorized by the State Division of Old Age Relief.

The above provision is deemed necessary in order to provide for proper legal handling of the Federal funds granted for purposes of old age assistance.

Resolution No. 11

Resolved, That the term "old age relief" shall be dropped from the New Jersey Act and the term "old age assistance" substituted therefor throughout.

The above resolution would result in the adoption of standard nomenclature and terminology as used in the Federal Social Security Act and generally in other States.

Drop Prohibition of Old Age Assistance to Those Who Have Been Convicted of a Crime—

RESOLUTION No. 12

> *Resolved,* That Section 2 (h) of Chapter 219, P. L. 1931, be eliminated from the Act.

Section 2 (h) of the present act denies old age relief to those who, at any time, have been convicted of a felony or high misdemeanor. The clause has imposed a heavy second penalty on aged applicants who had long since expiated their crimes. Those who have had to administer this clause have strongly recommended that it be dropped as being anti-social and harmful. Old age assistance should not be concerned with past conduct, whether good or bad, but solely with the mitigation of a present need.

Clarification of Property Ownership Clause—

RESOLUTION No. 13

> *Resolved,* That Section 2 (j) of the present statute be amended to read "does not possess real or personal property the net equity of which is in excess of $3,000; provided, however, that this limitation on ownership of real or personal property shall not be construed as an exemption limit but shall serve as a guide to welfare boards in their administration of the act."

The above resolution is made for the purpose of clarifying the present language of the act, which has been regarded as obscure.

Appropriation and Payment of Funds for Relief—

RESOLUTION No. 14

> *Resolved,* That the revised statute shall contain provision authorizing an annual appropriation for old age assistance to be made up of funds received from the Federal Treasury and supplemented from the general

> funds of the State; that so long as the Federal participation for old age assistance continues to the extent of 50 per cent, the State Treasurer shall pay bills submitted by the county welfare boards on a commitment basis after approval by the State Division of Old Age Relief, and the Commissioner of Institutions and Agencies, in the amount of 87½ per cent of the total cost of relief, on a monthly basis, in advance; and that the Division of Old Age Relief shall be authorized to make adjustments with respective county welfare boards from month to month in order that payments shall not exceed actual expenditures.

The provision recommended above will take care of the legal necessities involved in handling the finances of old age assistance with Federal and county participation.

Allocation of Federal Aid for Administration—

RESOLUTION No. 15

> *Resolved,* That the State Division of Old Age Relief shall be given power to allocate Federal funds received for administration of old age relief to the county welfare boards in proportion to their respective annual appropriations for administration of old age assistance.

The above resolution is for the purpose of providing an effective distribution of Federal funds to be devoted to the administration of old age relief. The burden of this administration falls upon the counties and it is deemed only fair that Federal aid granted shall be made available to the counties on an equitable basis.

RESOLUTION No. 16

> *Resolved,* That directors of county welfare boards shall be designated as chief executive and approval officers of county welfare boards.

The above change is deemed necessary in order to clarify the act.

Repayment to Federal Government of Its Share of Funds Recovered from Estates of Recipients—

RESOLUTION No. 17

Resolved, That the revised act contain a provision authorizing the Division of Old Age Relief to adjust accounts from time to time with the Federal Social Security Board and to credit the Federal Government to an extent not to exceed one-half all sums which may be recovered from recipients of old age assistance or from their estates.

The above provision is equitable and is required by Section 2 (a) 7 of the Federal Social Security Act.

Incorporation of Amendments and Supplements to Chapter 219, *P. L.* 1931—

RESOLUTION No. 18

Resolved, That the revised old age assistance act incorporate such of the amendments and supplements of Chapter 219, P. L. 1931, as may be consistent with the revised act, these being: Chapter 246, P. L. 1932; Chapter 149, P. L. 1933, and Chapter 213, P. L. 1935.

The above resolution is designed to bring about the incorporation into the Old Age Assistance Act of those matters covered by the acts mentioned in the resolution.

Repeal of Prior Legislation—

RESOLUTION No. 19

Resolved, That provision be made for repeal of the chapters mentioned in Resolution No. 18 upon the adoption of the revised Old Age Assistance Act.

The method of complete revision of the act with repeal of prior legislation is recommended to the Legislature. This will insure clarity of purpose and simplicity of administration.

CHAPTER 3

Aid to Dependent and Crippled Children

In accordance with its policy of consulting the administrative agencies charged with responsibility for carrying out specific welfare acts of this State the commission sought information and advice from the State Board of Children's Guardians with respect to Title IV of the Federal Social Security Act.

The State Board of Children's Guardians made a study of the requirements placed upon New Jersey by this title and advised against participation because, in its view

> Federal participation to the extent of one-third the cost of care for children eligible under the Federal Act would require reduction in the required settlement (now five years) to one year and would thereby increase the cost beyond the extent of assistance to be received from the Federal Government.

The State Board of Children's Guardians did not, however, provide any statistical basis for its judgment, indicating that no figures worth considering could be obtained.

The commission has ascertained that the children who would become eligible for this form of aid in the event that the New Jersey statute should be liberalized are indigent children and would, in any event, be public charges. Therefore, good public policy would demand that the advantages of skilled ministration available to those eligible for Board of Guardians' care now should be extended to those excluded by the terms of a law which has become obsolete so far as this provision is concerned; *i. e.,*

> The five-year settlement clause contained in Chapters 263 and 264, P. L. 1932, and their predecessor laws were enacted for the purpose of preventing an influx of families from other States in order to obtain such aid. Other States are now providing substantially the kind of care provided in New Jersey and therefore the five-year clause is unnecessary; and

> Furthermore, the five-year clause was enacted at a time when each county had to meet the entire cost of care for Board of Guardians' wards having legal settlement in that county. This reason for the restriction has likewise become less important since the State assumed one-half of the cost (July 1, 1935). With Federal participation to the extent of one-third, the burden on the counties would be still further lightened.

At the time the State Board of Guardians made its study it could not know that Federal participation would be available to the extent of one-third of the entire cost of this category of assistance, *including the cost of administration.* The Federal Social Security Board has now ruled that such would be the case, so long as the cost of care plus cost of administration does not exceed $18.00 per month for the first child and $12.00 per month for additional children in any one family.

Nor could the State Board of Children's Guardians know that Federal participation would be available for children coming under the provisions of the New Jersey Dependent Children's Act (Chapter 364, P. L. 1932) so far as these are cared for in the homes of blood relatives. Approximately one-third of all children now under this form of care would become eligible for Federal aid under another ruling of the Federal Social Security Board.

It is believed that the number of children to become eligible for Board of Guardians' care would not increase more than one-third beyond the present 28,000. While it is impossible to provide figures to bear out this belief, the logic of the present situation would indicate that a limited additional number could qualify. The principal source of cases to be added, as a result of a lowering of the required residence from five years to one year, will arise from among families who, while at present living in the State, have never acquired county settlement. Many of the families which would become eligible for this form of relief are now receiving public assistance through the Emergency Relief

Administration or municipalities. To the extent that this situation exists the relief to be given under liberalized child welfare laws would constitute a change in the method of giving relief which would be somewhat more costly.

Therefore, *it is the conclusion of this commission that the present opportunity to modernize the child welfare laws of New Jersey ought to be utilized.* Other States are moving in a similar direction and reduction in State and county settlement provisions is practical now when it was unduly burdensome at the time these laws were last revised in 1932. The relief to be granted is not a matter of right but is extended only on proof of indigency and only to the extent that the indigency actually exists.

In order to carry out the above policy in conformity with requirements of the Federal act, the Commission has adopted the following resolutions:

Change of Jurisdiction in Making Grants for Home Life Cases—

RESOLUTION No. 20

> *Resolved,* That Chapter 263, P. L. 1932, be amended to remove jurisdiction over the making of so-called home life grants from the courts to county welfare boards as constituted for the administration of old age assistance and other welfare functions on a county-wide basis.

The above resolution is required by the language of Section 402 (a) (3) and (4) of the Federal Act, which reads:

> "(3) either provide for the establishment or designation of a single State agency to administer the plan or provide for the establishment or designation of a single State agency to supervise the administration of the plan;
>
> "(4) provide for granting to any individual whose claim with respect to aid to a dependent child is denied, an opportunity for a fair hearing before such State agency.

Hearings of Appeals Rest with State Board of Guardians—

Resolution No. 21

Resolved, That appeals from the decisions of county welfare boards be heard and acted upon by the State Board of Children's Guardians as the representative of the Department of Institutions and Agencies; provided, however, that the right to obtain a writ of certiorari shall be held inviolate.

Apportionment of Federal Aid—

Resolution No. 22

Resolved, That any funds received from the Federal Government for aid to dependent children be allocated to the State Board of Children's Guardians as a part of the annual appropriation for use in accordance with the terms of any agreement to be entered into between the State Board of Control of Institutions and Agencies and the Federal Social Security Board; that the State Treasurer be authorized to accept Federal funds apportioned to this State for aid to dependent children, and that bills of the respective counties to the extent of two-thirds the cost be paid monthly, in advance, on a commitment basis, to the State Board of Children's Guardians on certification by its chief executive officer that the respective counties have paid one-third the cost in advance.

The above resolution provides for an equitable sharing of the cost of aid to dependent children as between Federal government, State, and counties, and is required by the terms of the Federal Act.

Allocation of Funds for Administration—

Resolution No. 23

Resolved, That any funds received from the Federal Government for assistance in administering aid to dependent children be allocated to the State Board of Children's Guardians as a part of its annual appropriation for administration.

The above resolution provides for an equitable sharing of administration costs as between Federal Government, State and counties.

Reduction of Settlement to One Year—

Resolution No. 24

Resolved, That Chapters 263, 264, 265, 266 and 267, P. L. 1932, be amended to provide that children otherwise eligible for the care therein provided shall become eligible after one year of State residence and that the State shall bear the full cost (less any Federal aid) pending such time as the child shall have resided in a county for one year, when the county shall assume its one-third share of the cost.

The above resolution is required by Section 402 (b) (a) (1) and (2) of the Federal Social Security Act.

Resolution No. 25

Resolved, That the State Board of Control be authorized through its officers or agents to apply for and obtain Federal aid as provided under Sections 403 and 521 of the Social Security Act and to organize its work in behalf of dependent and neglected children to comply with the reasonable requirements of the Social Security Board and the Federal Children's Bureau, as set forth in Title IV, Sections 401 to 406, and Title V, Section 521, of the Social Security Act.

The above resolution provides for an enabling clause permitting New Jersey to participate in the Federal program for aid to dependent and neglected children.

COST

It is believed the costs involved in the program as set forth above will remain for State and counties substantially what they would be under the existing program without Federal aid. At the same time there is a possibility that the increased number of cases to be assumed by virtue of the reduction in settlement requirement from five years to one year would not be large enough to absorb all of the Federal allotment of funds in additional cases. For purposes of illustration the following table has been compiled:

	—Estimates for 1936-37—		
	Under present act	Residence changed to 1 year 20% increase	Residence changed to 1 year 33 1/3% increase
Average case load (Home Life)	19,968	23,902	26,624
Average case load (Dependent children)	8,775	10,530	11,700
Relief (Home Life)	$3,000,000	$3,600,000	$4,000,000
Relief (Dep. child.)	1,580,000	1,896,000	2,106,666
Total Relief	$4,580,000	$5,496,000	$6,106,666
Admins. Cost	329,000	395,000	438,666
Total Cost	$4,909,000	$5,881,000	$6,545,332
Federal share	none	1,542,333	1,735,851
State share	2,619,000	2,306,001	2,550,973
County share	2,290,000	2,032,667	2,258,508
Net gain to State Treasury		312,999	68,027

Many of the additional cases to become eligible for Board of Guardians' care through the contemplated changes in the law would come from the existing case loads of the Emergency Relief Administration and the municipalities. It must be recognized, however, that some would be children not now receiving relief and to the extent that this took place, the gain in State Board of Guardians' case load would be a net gain.

AID TO CRIPPLED CHILDREN

Consultations with the Crippled Children's Commission concerning the advisability of revising Chapter 70, P. L. 1931, under which the Crippled Children's Commission functions, led to a joint conclusion that the Federal aid available for this work be accepted. Therefore, the following resolutions were adopted:

Removal of Restrictions on Expenditures for Aid to Crippled Children—

RESOLUTION No. 26

Resolved, That Chapter 70, P. L. 1931, be amended to strike out the following language: ''and for the purpose of carrying this act into effect there is hereby appropriated the sum of fifteen thousand dollars ($15,000.00) or so much thereof as may be necessary, when included in any appropriation bill.''

The above resolution provides for elimination of a clause limiting expenditures of the Crippled Children's Commission to $15,000.00 a year and is so restrictive as to prohibit the Federal co-operation contemplated.

Authority to Accept Federal Funds—

RESOLUTION No. 27

Resolved, That the Crippled Children's Commission be given authority to co-operate with the Federal Government and the several counties for furtherance of the purposes as set forth in Title V, Sections 511 to 515 of the Social Security Act; and that the State Treasurer be authorized to accept funds from the Federal Government for purposes of these sections and to disburse them in accordance with appropriations to the Crippled Children's Commission.

The Crippled Children's Commission plans to use additional funds to be obtained on a matching basis from the Federal Government to increase its services to crippled children, particularly those in the spastic and infantile paralysis categories. It is estimated that the total State appropriation to be required will be $20,000.00. which sum would then be matched with Federal funds.

At present there are in excess of 15,000 cases on the records of the Crippled Children's Commission. About half of these are traceable to infantile paralysis. New cases of infantile paralysis reported in 1935 to the New Jersey Commission numbered 461.

About 1,000 cases on the commission rolls are spastic, with about 750 in need of muscular training and special education.

The financial situation with respect to aid to crippled children is estimated as follows:

	1936-37	
	Present Act	Amended Act
Number of cases	15,000	15,000
State Cost (Adminis.)	$14,130	$20,000*
County cost	90,000	90,000
Federal contribution	none	20,000*
Total cost to public funds	$104,130	$130,000

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* Additional funds to be used for special rehabilitative treatment and education of spastic and post infantile paralysis cases.

CHAPTER 4

Public Health, Maternal and Child Health

It is the opinion of this commission that public health, maternal and child health activities might be extended if the funds to be allocated to New Jersey by the Federal Government under the terms of the Social Security Act were to be accepted.

The Surgeon-General under this Federal Social Security Act may allocate funds ''for the purpose of assisting the State and the political subdivisions of the State in establishing and maintaining adequate public health services and for training personnel for State and local health work.''

The Federal Children's Bureau may allocate funds to New Jersey upon the basis of an approved State plan for the ''purpose of enabling New Jersey to extend and improve, as far as practicable, services for promoting the health of mothers and infant children.''

The State Department of Health, which is the agency for supervising the administration of public health, maternal and child health, adopted the following preamble and resolution on December 10, 1935:

> ''*Whereas,* We have been informed that any part of the Social Securities Bill may be complied with, without enacting all parts of Social Securities legislation contemplated by the Federal Government; therefore, *Be It Resolved,* That the State Department of Health recommend to the New Jersey Social Securities Commission the enactment of such New Jersey State enabling legislation in regard to maternal and child welfare and public health administration provisions and plans as are now set up and approved by the Department, with the proviso that only such Federal funds shall be obtained for the New Jersey State Department of Health as require no additional funds to be provided by the State of New Jersey for the securing of such Federal funds.''

Plans have been formulated by the State Department of Health to utilize the funds which are expected to be made available by the Surgeon-General under Title 6 of the Federal Social Security Act. These plans propose four projects to further the health interests of New Jersey and will be entirely financed by Federal appropriations.

> To improve the efficiency of public health work in rural communities and small incorporated municipalities, the first project recommends the creation of two new State health districts, in addition to the existing five districts, and advocates an increased central office personnel to provide the necessary additional supervision.
>
> The second project extends the present facilities to control venereal disease in the State.
>
> The third project is a special health problem in New Jersey and it is particularly designed to reduce tuberculosis among the colored people. The existing plan for tuberculosis control has not been successful among the negroes, inasmuch as 21 per cent of deaths from tuberculosis in 1934 were among this group, whereas colored people comprise only 5 per cent of the State population.
>
> The fourth project is intended to expand and supplement the present plan for diphtheria immunization and smallpox vaccination now in operation in New Jersey.

The New Jersey Department of Health, in active cooperation with the New Jersey State Medical Society and the Visiting Nurses' Association, has prepared a plan to extend and improve the present facilities for maternal and infant health.

> The maternal health program is designed to develop additional prenatal and postnatal care by means of physicians, nurses and courses of instruction; develop obstetrical care, and provide nurses at the homes of low-wage groups during times of birth.

The infant health program is designed to extend the supervision and instruction of mothers in care, feeding and management of infants.

Resolution No. 28

Resolved, That the commission recommends that New Jersey enact enabling legislation to permit the State Department of Health to utilize in such way as seems practicable those phases of the Social Security Act relative to public health, maternal and child health.

To secure these Federal funds it appears that New Jersey must enact enabling legislation.

The Attorney-General, in answer to the question "whether an enabling act will be necessary in order to allow our State Treasurer not only to receive the funds but to disburse them," replied:

> "I have examined our statute and do not find any law which covers the subject-matter, and, therefore, of opinion that if Federal grant of money is to be paid to this State, the Treasurer should be the custodian of such money and that the same should be paid out only on certification from the State Department of Health, and that for this purpose legislation should be secured."

CHAPTER 5

AID TO THE BLIND

Title 10 of the Federal Social Security Act provides for aid to the blind. The commission consulted the board of managers of the New Jersey State Commission for the Blind with regard to the changes in the State law necessary to bring aid to the blind into conformity with the Federal requirements if Federal aid is to be accepted.

The New Jersey Commission for the Blind carries on a comprehensive program designed to provide for the education of the young blind, vocational training and employment for the employable, social and medical services for the entire group, according to their needs, and financial relief to those who are without means of support. It has been the objective of the State Commission for the Blind to adjust the services rendered to the needs of each individual. It is realized that the blind are not a homogeneous class but rather a heterogeneous group with diverse abilities, problems and needs, and that practically the only thing they have in common is their handicap.

New Jersey, with a total population of 4,193,000 in 1930, had an estimated blind population of 2,500. Approximately $106,000.00 per year is spent for blind relief. The Social Security Commission believes that the New Jersey State Commission for the Blind has demonstrated its ability to deal with this handicapped group in an adequate manner. The fact is, however, that the Federal statute requires as a condition for granting Federal funds that the administration, so far as the granting of relief is concerned, be performed as an administrative function. In New Jersey the courts are required to fix the sums of money to be paid to each individual blind person who is adjudged to be indigent or partially indigent. It is therefore necessary to make a change in the New Jersey statute which will meet this condition, and in addition will meet two other general conditions set forth in the Federal law, these being, namely, reduction in the settlement provision from the present five years to five years within the last nine, and one year continuously preceding the date of application, and the provision for making appeals from decisions to the central administrative body.

In order to meet these specific needs the commission has adopted the following resolutions:

Resolution No. 29

> *Resolved,* That Chapter 231, Public Laws of 1921, be amended and revised to provide that residence requirements for aid to the indigent blind shall be five years within the last nine, with one year immediately preceding the date of application; that the State shall assume the expense for any recipient of blind relief who shall meet the residential requirements pending such time as he may have completed one full year's residence in a county.

The above resolution meets the requirements as set forth in Section 1002B1 of the Federal Social Security Act.

Resolution No. 30

> *Resolved,* That the powers now invested in the Court of Common Pleas or other county courts for the granting of blind relief be transferred from those courts to the county welfare boards in counties where such welfare boards exist for the administration of old age assistance and other welfare functions; that investigations of applications for the granting of blind relief be made by the staff of the Commission for the Blind and supplemented by the staffs of the county welfare boards prior to determination by the Commission for the Blind of the amount of grants which shall be made.

The above resolution provides a practical method of meeting the Federal requirement as set forth in Section 1002A of the Federal Social Security Act.

RESOLUTION No. 31

Resolved, That in the revision of the State Act provision shall be made whereby an applicant denied relief or having other cause for appeal from the decision of the State Commission for the Blind may appeal to the Board of Control of the Department of Institutions and Agencies or its designated representative. Provided, however, that nothing contained in the revised act shall curtail the right of an applicant to a writ of certiorari.

The above resolution is deemed to be a practical method of meeting the requirement of Section 1002A4 of the Federal Social Security Act.

RESOLUTION No. 32

Resolved, That the State Board of Control of Institutions and Agencies shall be authorized to co-operate and enter into co-operative agreements with the Federal Social Security Board and to receive contributions from the United States Government for assistance to the Blind, such contributions to be paid into the State Treasury and held for use of the Department of Institutions and Agencies and the New Jersey Commission for the Blind for the purposes as set forth in those agreements.

RESOLUTION No. 33

Resolved, That Federal funds for blind relief which may be received pursuant to any agreement between the State Board of Control of Institutions and Agencies and the Federal Social Security Board shall be used for the purpose of matching funds provided by the counties, or the State, for blind relief, for education of the blind and medical or surgical care and treatment of the blind; that Federal funds received pursuant to the above agreement for administrative purposes shall be made available to the State Commission for the Blind as a part of its annual appropriation.

The above resolution provides for the financial co-operation of State and counties with the Federal Government for the provision of blind relief and is in accordance with the requirements of the Federal Social Security Act.

RESOLUTION No. 34

Resolved, That the act be revised to authorize the State Commission for the Blind to make money grants to blind persons under the age of 21 years for the following purposes:

Educational expenses
Medical or surgical care and treatment of the eyes.

The above resolution would apparently make it possible for the State to obtain Federal aid for the above special purposes which are a part of the services rendered by the State Commission for the Blind, but have hitherto been made in the form of grants in kind only. Unless the method of making these grants is changed, the State would apparently be unable to obtain Federal aid for these purposes.

Cost

Analysis of Federal participation in aid for the blind results in the following:

	—Estimates for 1936-37—	
	Under Present Act	Residence changed to 5 years within last nine
Average case load	450	475
Total estimated cost	$151,400	$158,750
Federal Aid	none	65,312
State's share	38,900	34,063
Counties' Share	112,500	59,375
Net gain to State Treasury		4,837

The above estimate is based on Federal acceptance of the State contribution for administration as "State participation" which is required by the Social Security Act. If in addition the State were required to bear a part of the cost of the relief given the blind, the result would be additional net cost over present State expenditures, rather than net saving.

CHAPTER 6

GENERAL RECOMMENDATIONS

The commission offers the following resolution, which applies to the general problem of social security in the State of New Jersey:

RESOLUTION No. 35

> "*Resolved,* That it is the opinion of this commission that the Legislature, in considering amendments and revisions of the social security laws, keep the following principle in mind, namely, that necessary medical and health services through the members of the medical and associated professions, so far as practicable, on a reasonable fee basis, with free choice of physician by the patient, be made a definite part of the aid to be extended so far as may be possible under the necessities of financial limitations."

CHAPTER 7

Old Age Annuities and Unemployment Benefits

The commission has been greatly impressed by the weight of legal opinion brought to its attention, holding that the above plans are incompatible with the limits of power as set forth in the Constitution of the United States. However, since the State of New Jersey is not called upon to participate to any degree in the administration of the old age annuity titles of the Federal Act, the members of the commission have refrained from dealing with that phase of the situation in any detail.

By so much as the Federal Government, either by direct legislation or by indirect action, seeks to make its laws or systems effective, it pre-empts the field as against action by the State of New Jersey looking to the establishment of its own system. From the nature of things it is impossible that two systems should operate within the same field; the burden of a Federal system and of a State system when added together would be so large as to render their concurrent operation impossible.

It has been argued, however, that forty-eight separate State plans for old age insurance would involve even greater financial and administrative difficulties than those pointed out in the present Federal system.

The Federal Social Security Act requires even within itself and without regard to independent legislation by the State, a duplication of administrative agencies. This becomes evident when we consider the case of any particular workman. His old age annuity will be administered and records as to his employment, wages, age and other matters will be kept by Federal agencies and centralized in Washington. Records in respect of unemployment benefits will be kept by State agencies and will then be forwarded (at least in condensed form) to Washington. Here is within the act itself a duplication of administration. Such duplication results from separating things which should not be separated. It would seem that there should not be two administrative systems.

The taxes against payrolls and employee earnings as above set forth are clearly excessive in the view of those technical experts who advised the Congress and whose advice was disregarded. It is estimated that reserves to be built up over a period of thirty-five years will amount to $46,000,000,000.00 or more, all of which sum is to be invested in government bonds. Most actuaries hold that the difficulties of putting a government plan on a full reserve basis are so great that a pay-as-you-go method is much more practical. The original recommendations made by the Advisory Council called for much smaller contributions than those actually enacted in Title 8 of the Federal Act. These recommendations contemplated a maximum reserve of $11,000,000,000.00. However, this relatively conservative reserve was discarded in the final draft of the act, and the result is that under the present plan the reserve will reach approximately $6,000,000,000.00 in ten years and $15,000,000,000.00 in fifteen years. When the reserve fund reaches the $10,000,000,000.00 or $15,000,000,000.00 level during the early stages of the system, and income is far in excess of the benefit payments, there will be a strong tendency to enlarge the benefits or to reduce the contributions, thus bringing on in later years a more serious deficit. The original plan had the advantage of building up reserves gradually over a period of years with less danger of an adverse effect on industry and commerce.

EXPERIENCE INADEQUATE

Experience in this country with unemployment compensation plans is almost exclusively* confined to voluntary arrangements, set up by individual employers,** or jointly by employers and employees,*** or in a few community organizations.**** This experience has been unsatisfactory in that the prolonged depression has forced liquidation of many unemployment compensation funds which had not achieved sufficient reserves to withstand the continuing drain which has taken place. On the other hand, broad experience with compulsory government control of unemployment compensation plans has been gained in several of the highly industrialized nations of western Europe, and particularly over a period of the last twenty-four years in Great Britain.

This commission is making a thorough study of the British experience. The history of all available plans, including the German plan, is also having our consideration as is the Australian experience in providing against the hazards of old age. What consideration we have been able to give to these plans in other countries has led us to the conclusion that no one of them has so far found a complete solution to these problems. There are certain elements common to every plan for unemployment benefits and old age annuities. Each plan involves the gradual accumulation of a fund, conservation of that fund until time of need, and disbursement of the fund in time of need to those entitled to receive it. No matter what the plan, problems of administration and supervision are involved. Our investigation will seek the best of all plans.

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* Exception, Wisconsin since 1933.

** Includes: Dennison Mfg. Co., Columbia Conserve Co., Dutchess Bleaching, Inc., Rockland Finishing Co., United Diamond Works, John A. Manning Paper Co., Behr-Manning Corp., S. C. Johnson & Son, Leeds & Northrup, Proctor & Gamble, American Cast Iron Pipe & Foundry Co., Samarkand Co., Hill Bros. Co., J. I. Case Company, Minnesota Mining & Mfg. Co., General Electric Co., Wm. Wrigley, Jr., Company.

*** Includes: United Wall Paper Crafts of North America; Men's Clothing Industry in Chicago, Rochester and New York; Women's Garment Industry, Cleveland; Lace Industry in five centers; Cloth Hat and Cap Industry in eight centers; Straw Hat Industry, New York; Seaboard Air Line R. R., maintenance of way; Leather Goods Manufacturers and Pocketbook Workers' Union; Upholstery Weavers and Workers' Union.

**** Rochester, 8 companies; Fon-du-Lac, 3 companies; Holyoke, 2 companies.

Titles 3 and 9 of the Federal Social Security Act provide for a system of unemployment compensation to be administered jointly by the several States and the Federal Government. The method adopted to obtain unemployment compensation legislation in the respective States provides for the levying of a Federal tax as follows:

Year	Rate of Tax
1936	1%
1937	2%
1938-thereafter	3%

Against the above taxes on payrolls which apply to employers generally, with specific exceptions as noted elsewhere in this report, individual employers may receive a credit up to 90 per cent of the payroll tax levied under Title 9 provided they have contributed to an approved State plan of unemployment compensation. The Federal Act furthermore provides that approval shall be given to any State plan which meets certain requirements set up by the Federal Act, as outlined elsewhere in this report.

There is a weight of legal opinion to the effect that these titles of the Social Security Act may also be unconstitutional. However, enactment of the unemployment compensation titles of the Social Security Act has unquestionably served two purposes, namely, it has focused the attention of the States on the need for a practical method of adjusting our national economy in the interests of individual security, and it has offered a formula under which the States may proceed to act, with the knowledge that other States may take similar action under the shelter of the Federal Act and thus eliminate the danger that some backward States may offer industry negative advantages by failing to provide similarly for the security of their citizens.

The members of the commission have endeavored to acquire a sufficient knowledge of the unemployment compensation problem to offer a practical working plan which will stand, regardless of the ultimate fate of the Federal Act. The commission has in its files a large amount of data relating to a considerable number of plans, and is in the process of assembling other material that it may have for review all of the known experience on the subject. In spite of our efforts, however, we have not completely surveyed the larger implications and difficulties of such legislation.

There is widely divergent opinion among those who may be regarded as authorities as to the objectives of unemployment compensation.

> One responsible group believes that unemployment compensation benefits should be held back for times of catastrophic depression.
>
> Another group, equally responsible, holds that the chief function is to mitigate the human suffering caused by normal unemployment and that it is clearly impossible to depend in any significant degree upon any such plan during a period of deep cyclical depression.

Another divergence of authoritative opinion is centered on the objectives of an unemployment compensation plan.

> One group believes that contributions should be made to provide the greatest possible incentive for individual employers to stabilize or regularize their employment.
>
> Another group believes that the primary objective should be to mitigate the human suffering that accompanies loss of remunerative work.

One of the principal factors to be considered in any plan is some arrangement whereby the employee himself will find it to his own interest to conserve the unemployment fund, rather than to draw on it unnecessarily.

While the objectives outlined above are not incompatible, the weight given either will influence the type of plan to be evolved.

UNEMPLOYMENT NOT AN INSURABLE RISK

Practically all actuaries agree that unemployment is not an insurable risk. At the same time there is widespread impression, particularly among the employee group, that the plan under contemplation will insure the risk of unemployment. This is, of course, an incorrect impression. At best the only plan which can be enacted would provide a rather meagre first line of defense against ordinary unemployment of normal times. The early experience of Great Britain in this field is a case in point.

STABILIZATION OF EMPLOYMENT CONSTRUCTIVE

Stabilization of employment was one of the objectives toward which the Advisory Council on Economic Security directed its recommendations. We have the testimony of employers who have experimented with forms of unemployment benefit plans that they may and do serve as strong incentives to stabilize when they are drawn to place emphasis on this feature. The Wisconsin and Utah plans, and to a more limited degree the New Hampshire, California and Massachusetts plans, are drawn with this objective at the fore.

It is believed by the members of the commission that progress can be made in this direction in a manner comparable to the manner in which employers under workmen's compensation have been able to reduce accidents in recent years. Certainly some form of merit rating or separate employer accounts should be given consideration. We hold it to be true that if a company or industry can provide steadier work it will generally result in lower costs (since a steady worker can produce more per hour) and more consumption. It is always better socially to assure maximum employment than to pay benefits. Lack of extreme care in drafting an unemployment compensation plan might result in placing a premium for the employer on increasing fluctuation of employment, or a premium for the employee to draw upon the fund unnecessarily, or both. It is believed that some of the plans already adopted tend to do just this. New Jersey wishes to avoid such danger.

In regard to the accumulation of the fund, the various plans exhibit a wide divergence. Some place the burden entirely upon the employer, some upon the employer and employee, some upon the employer, the employee and the government. Growing out of the source of contribution are different problems as to who shall contribute and who shall administer.

State administration sometimes entails political consequences, among which is the utilization of the plan and the organization created for its administration for other purposes than contemplated, usually for purposes of charitable relief. In the case of government participation care should be exercised to avoid political determination of the amounts of benefits payable and any departure from sound financing and actuarial practice.

The foregoing are only some of the difficulties which have been brought to our attention, and these difficulties apply not only to the raising of the money, but to its conservation and ultimate distribution. This commission recognizes the desirability of an effective, sound plan which would afford the greatest measure of protection against hazards of unemployment and old age.

Position Akin to That of Workmen's Compensation Commission

There are many important detailed aspects of unemployment compensation about which the commission is unable as yet to come to agreement. In this respect the commission sees a close analogy with the situation that confronted New Jersey in considering workmen's compensation some twenty years ago. New Jersey was not the first State to enact such legislation. New Jersey, on the other hand, took the necessary time to make a thorough canvass and study of all the important considerations, and as a result the New Jersey Workmen's Compensation Act became the first practical act in that field to become operative in this country. In the end other States had to undo what they had done more hastily and follow the New Jersey lead.

In the present instance there are other States that have "plunged into" this field—as one witness at our hearings recommended we should do—with perfectly weird results. For example, note the North Carolina so-called unemployment insurance act. Also note how New York State, which hastily passed an act on this subject a year ago, is now busily revamping it.

Therefore, this commission feels that if New Jersey is to accomplish basically sound and helpful work in this field, and not simply "plunge into" an unknown morass, it should, by all means, take additional time for further analysis of the vital factors—in the interest of both the workers and employers of this State.

PRACTICAL QUESTIONS WHICH MUST BE ANSWERED

Some of the practical questions to which adequate answers must be worked out by any unemployment compensation plan worthy of adoption in this State are:

Shall the prime objective of the New Jersey plan be the stabilization of employment?

Shall the plan hold as its primary objective relief during a cyclical depression?

Shall the major effort be directed towards relief from the ill-effects of unemployment encountered in the course of the continuous changes taking place during normal periods of productivity?

Shall seasonal unemployment in certain industries and commercial enterprises become a subject for major attention?

If stability of employment is desired, what is the most practical means of effecting it? There are important collateral questions under this heading which must be explored.

If unemployment compensation is to be adopted, who shall pay the cost? Shall it be the employer alone? Shall it include payments by the employee? If so, why? Shall the State be a contributor? In the answers to these questions are far-reaching economic effects which may control eventual success or failure.

Who shall be beneficiaries? Shall benefits accrue strictly to those in whose names contributions are made? Or shall the plan be used to raise the level of those at the bottom of the economic scale of life?

The weight given the above factors will help to solve other questions, such as: when benefits become payable; how much contributions shall be; how long benefits shall be paid; how much benefits shall be.

Then there is the question of an administrative plan. We need only indicate our apprehension lest unemployment compensation become a creature of practical politics to demonstrate the difficulties encountered here.

Consideration given these and related questions by the members of the commission indicate that there are enormous possibilities for good or ill involved; that recommendations should be made only after a more thorough exploration of this problem has been carried out; that wisdom dictates the necessity of further study.

This commission is of the opinion that a sound plan of unemployment compensation should be adopted by the State of New Jersey, but is not at this time prepared to recommend any specific program; it is continuing its studies and hopes to submit later to the Legislature a statement of the various advantages and disadvantages of several different plans, together with its recommendation as to which of these seems most appropriate for adoption in New Jersey.

The foregoing majority report is submitted by those members of the commission whose names appear below:

HARRY L. DERBY,
JOHN C. BARBOUR,
WILLIAM J. ELLIS,
ELIZABETH A. HARRIS,
ROBERT C. HENDRICKSON,
FREDERICK S. KELLOGG,
HENRY YOUNG, Jr.

While we agree with all of the specific recommendations in the majority report, we regret that we are unable to agree entirely with its text for the following reasons:

1. It is our impression that the temper of the report is not sufficiently judicious. It contains certain critical implications with respect to the Federal Social Security Program which, in our opinion, lack reasoned justification.

2. In our judgment the report does not sufficiently emphasize the need for prompt action in preparing an unemployment compensation program based on sound social insurance principles.

DAYTON D. McKEAN.
ROBERT P. FISCHELIS,

Minority Report

To the Honorable Harold G. Hoffman, Governor of the State of New Jersey, and to the Members of the Legislature of the State of New Jersey:

The undersigned members of the Commission on Social Security are unable to subscribe to the entire report of the majority members of the commission for the following reasons, which, for the purpose of brevity, we herewith quote from the specific mandate of the Legislature as set forth by the Legislature in creating the commission. The language of Joint Resolutions 7 and 15, as approved June 27, 1935, by the Governor, are specific and should, we feel, govern the nature of the report of the entire commission. We quote, in part, the language used:

> (a) Section 1. "Whereas economic insecurity due to unemployment is a serious menace to the health, welfare and morale of the people of this State, unemployment is, therefore, a subject of general interest and concern to all its people and *requires appropriate action by the Legislature* to prevent its *spread, and to lighten the burden which now so often falls with crushing force upon the unemployed and his family."*
>
> (b) Section 3. The commission is specifically charged to determine "* * * in what respect the State of New Jersey *may most effectively co-operate with such Federal legislation as may be enacted."*
>
> (c) Section 4. "* * * to determine what changes in New Jersey's laws, if any, may be advantageous."
>
> (d) Section 6. "* * * *to cause (the commission) to introduce such bill or bills as in its judgment* may be required for *the proper carrying out of objects"* (ours).

I. In respect to the above legislative order the undersigned members of the Commission on Social Security are compelled to dissent, in part, from the report of the majority of the members of the commission, and, herein, submit the following:

> 1. The undersigned members of the Commission on Social Security subscribe to that part of the majority report wherein the report fully complies with the Federal Social Security Act in its provisions with regard to old age, aid to dependent and crippled children, maternal and child health, and aid to the blind.

II. The undersigned members of the Commission on Social Security further subscribe to the majority report, wherein on page 66 is stated the following:

> ''This commission is of the opinion that a sound plan of unemployment compensation should be adopted by the State of New Jersey.''

The undersigned further subscribe to the majority report wherein on page 12 is stated the following:

> ''This commission is resolved to recommend a sound New Jersey unemployment compensation plan which will provide for the setting up of reserves with which to meet the impact of unemployment.''

III. The undersigned members of the Commission on Social Security cannot agree with the majority members of the commission in either their recommendation for the delay of legislative action in this regard or with their reasons for advocating this delay. Accordingly the undersigned members of the commission make the following statement and the following specific recommendations:

As a result of the passage by the seventy-fourth session of Congress of the Social Security Act there is in existence a Federal tax in New Jersey and in all other States of the Union which is levied against the payrolls of employers employing eight or more persons, which for the year 1936 is 1 per cent of such payrolls, and for the year 1937 is 2 per cent, and the year 1938 and thereafter is 3 per cent of such payrolls. The Federal Social Security Act is designed to stimulate State unemployment insurance acts and towards this end provides one way and one way only by which this sum of money, collected in this way, which, on the basis of present payrolls, will be in the neighborhood of $25,000,000.00 in 1938 from the State of New Jersey alone, may be used for the benefit of unemployed of other States. This can be avoided by the passage of a satisfactory unemployment insurance or compensation law. Unless this is done these sums of money collected by the Federal Government will go into the Treasury Department of the United States for general purposes and will not be used in this State as intended.

The undersigned members of the Commission on Social Security, therefore, accordingly recommend that the Legislature of New Jersey pass such suitable and immediate legislation, as already have the Legislatures of New York, Massachusetts, Wisconsin, New Hampshire, California, Utah, Washington, Oregon, Alabama, and the District of Columbia, and hereby secure, as all of the States are certain to secure, the benefits of this taxation to relieve the distress caused by unemployment in the State of New Jersey.

Towards this end, the undersigned make the following specific recommendations, which in each instance are based on the Federal Act and the acts already passed by other State Legislatures:

(a) Taxes to be levied on employers' payrolls as provided for in the Federal Act.

(b) Funds secured from these taxes to be placed in a pooled unemployment compensation fund as defined in the Federal Act.

(c) The merit rating clause as defined in the Federal Act and by the Federal Social Security Board, to be adopted, thus permitting and providing a stimulus to employers to stabilize their labor forces and thus diminish unemployment.

(d) Employers of four or more persons, excluding those occupations which are excluded in the Federal Act, to be taxed. Provision to be made for voluntary coverage of those persons not covered by the compulsory features of the act.

(e) Unemployment compensation to be paid unemployed persons after three weeks of unemployment.

(f) Unemployment compensation to be paid for a minimum of fifteen weeks.

(g) Unemployment compensation to be a maximum of 50 per cent of past weekly earnings and not to exceed $15.00 weekly.

(h) The Unemployment Insurance Act in all other respects to conform to the Federal Act.

(i) The administration of the act to be placed in a commission appointed by the Governor and confirmed by the Senate and to include two representatives of industry, two representatives of organized labor, the Attorney-General of the State of New Jersey, Commissioner of Labor of the State of New Jersey and the Commissioner of the Department of Institutions and Agencies of the State of New Jersey.

IV. The undersigned members of the Commission on Social Security recommend the passage of such satisfactory legislation at the earliest possible moment in order that no part of the Federal tax now in effect on payrolls of the State of New Jersey be lost to the citizens of this State.

JOHN J. TOOHEY, Jr.,
VINCENT J. MURPHY.

Appendix A

Pursuant to resolution of the commission, the chairman, Mr. Derby, appointed the following subcommittees:

Committee on Unemployment Insurance
- Senator S. Rusling Leap, Chairman
- Commissioner John J. Toohey
- Vincent P. Murphy
- Frederick S. Kellogg
- Assemblyman Henry Young, Jr.

Committee on Old Age Assistance and Old Age Relief
- Mrs. Elizabeth Harris, Chairman
- Dr. Robert P. Fischelis
- Senator John C. Barbour
- Commissioner William J. Ellis

Committee on Aid to Crippled Children and Maternal and Child Welfare
- Senator John C. Barbour, Chairman
- Assemblyman Dayton D. McKean
- Mrs. Elizabeth Harris
- Senator Blase Cole
- Assemblyman Marcus W. Newcomb
- Dr. Robert P. Fischelis
- Commissioner William J. Ellis

Committee on Public Health Work
- Assemblyman Marcus W. Newcomb, Chairman
- Senator Blase Cole
- Dr. Robert P. Fischelis
- Mrs. Elizabeth Harris

Committee on Aid to the Blind
- Dr. Robert P. Fischelis, Chairman
- Assemblyman Henry Young, Jr.
- Senator John C. Barbour
- Commissioner William J. Ellis

At a subsequent commission meeting, on recommendation of the chairman of the subcommittee on aid to crippled children and maternal and child welfare, it was resolved that inasmuch as consideration of the subject of maternal welfare work more properly belongs to the subcommittee on public health that subject be referred to that committee.

The subcommittees of the commission have considered the matters referred to them and have reported their findings to the commission. The commission held public hearings as follows:

1. In the Assembly Chamber of the State House, Trenton, on October 7, 1935, commencing at shortly after 10:00 A. M. and ending after 7:00 P. M.

2. At the county court house, on the 22nd day of November, commencing 10:30 A. M. and ending at 6:15 P. M.

The commission has received numerous written briefs, arguments, letters and statements and has initiated numerous studies it deemed pertinent to the subjects before it.

Appendix B

Federal Social Security Act

[Public—No. 271—74th Congress]

[H. R. 7260]

AN ACT

To provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE

Appropriation

Section 1. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to aged needy individuals, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $49,750,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Social Security Board established by Title VII (hereinafter referred to as the "Board"), State plans for old-age assistance.

State Old-Age Assistance Plans

Section 2. (a) A State plan for old-age assistance must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim for old-age assistance is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; (6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and (7) provide that, if the State or any of its political subdivisions collects from the estate of any recipient of old-age assistance any amount with respect to old-age assistance furnished him under the plan, one-half of the net amount so collected shall be promptly paid to the United States. Any payment so made shall be deposited in the Treasury to the credit of the appropriation for the purposes of this title.

(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a), except that it shall not approve any plan which imposes, as a condition of eligibility for old-age assistance under the plan—

(1) An age requirement of more than sixty-five years, except that the plan may impose, effective until January 1, 1940, an age requirement of as much as seventy years; or

(2) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preceding the application; or

(3) Any citizenship requirement which excludes any citizen of the United States.

Payment to States

Section 3. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for old-age assistance, for each quarter, beginning with the quarter commencing July 1, 1935 (1) an amount, which shall be used exclusively as old-age assistance, equal to one-half of the total of the sums expended during such quarter as old-age assistance under the State plan with respect to each individual who at the time of such expenditure is sixty-five years of age or older and is not an inmate of a public institution, not counting so much of such expenditure with respect to any individual for any month as exceeds $30, and (2) 5 per centum of such amount, which shall be used for paying the costs of administering the State plan or for old age assistance, or both, and for no other purpose: **Provided,** That the State plan, in order to be approved by the Board, need not provide for financial participation before July 1, 1937, by the State, in the case of any State which the Board, upon application by the State and after reasonable notice and opportunity for hearing to the State, finds is prevented by its constitution from providing such financial participation.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of clause (1) of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such clause, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of aged individuals in the State, and (C) such other investigation as the Board may find necessary.

(2) The Board shall then certify to the Secretary of the Treasury the amount so estimated by the Board, reduced or increased, as the case may be, by any sum by which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State under clause (1) of subsection (a) for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Board for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Board, the amount so certified, increased by 5 per centum.

Operation of State Plans

Section 4. In the case of any State plan for old-age assistance which has been approved by the Board, if the Board, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any age, residence, or citizenship requirement prohibited by section 2 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 2 (a) to be included in the plan;

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

Administration

Section 5. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $250,000.00 for all necessary expenses of the Board in administering the provisions of this title.

Definition

Section 6. When used in this title the term "old-age assistance" means money payments to aged individuals.

TITLE II—FEDERAL OLD-AGE BENEFITS

Old-Age Reserve Account

Section 201. (a) There is hereby created an account in the Treasury of the United States to be known as the "Old-Age Reserve Account" hereinafter in this title called the "Account". There is hereby authorized to be appropriated to the Account for each fiscal year, beginning with the first fiscal year ending June 30, 1937, an amount sufficient as an annual premium to provide for the payments required under this title, such amount to be determined on a reserve basis in accordance with accepted actuarial principles, and based upon such tables of mortality as the Secretary of the Treasury shall from time to time adopt, and upon an interest rate of 3 per centum per annum compounded annually. The Secretary of the Treasury shall submit annually to the Bureau of the Budget an estimate of the appropriations to be made to the Account.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the amounts credited to the Account as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Account. Such special obligations shall bear interest at the rate of 3 per centum per annum. Obligations other than such special obligations may be acquired for the Account only on such terms as to provide an investment yield of not less than 3 per centum per annum.

(c) Any obligations acquired by the Account (except special obligations issued exclusively to the Account) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Account shall be credited to and form a part of the Account.

(e) All amounts credited to the Account shall be available for making payments required under this title.

(f) The Secretary of the Treasury shall include in his annual report the actuarial status of the Account.

Old-Age Benefit Payments

Section 202. (a) Every qualified individual (as defined in section 210) shall be entitled to receive, with respect to the period beginning on the date he attains the age of sixty-five, or on January 1, 1942, whichever is the later, and ending on the date of his death, an old-age benefit (payable as nearly as practicable in equal monthly installments) as follows:

(1) If the total wages (as defined in section 210) determined by the Board to have been paid to him, with respect to employment (as defined in section 210) after December 31, 1936, and before he attained the age of sixty-five, were not more than $3,000.00, the old-age benefit shall be at a monthly rate of one-half of 1 per centum of such total wages;

(2) If such total wages were more than $3,000.00, the old-age benefit shall be at a monthly rate equal to the sum of the following:

(A) One-half of 1 per centum of $3,000.00; plus

(B) One-twelfth of 1 per centum of the amount by which such total wages exceeded $3,000.00 and did not exceed $45,000.00; plus

(C) One-twenty-fourth of 1 per centum of the amount by which such total wages exceeded $45,000.00.

(b) In no case shall the monthly rate computed under subsection (a) exceed $85.

(c) If the Board finds at any time that more or less than the correct amount has theretofore been paid to any individual under this section, then, under regulations made by the Board, proper adjustments shall be made in connection with subsequent payments under this section to the same individual.

(d) Whenever the Board finds that any qualified individual has received wages with respect to regular employment after he attained the age of sixty-five, the old-age benefit payable to such individual shall be reduced, for each calendar month in any part of which such regular employment occurred, by an amount equal to one month's benefit. Such reduction shall be made, under regulations prescribed by the Board, by deductions from one or more payments of old-age benefit to such individual.

Payments Upon Death

Section 203. (a) If any individual dies before attaining the age of sixty-five, there shall be paid to his estate an amount equal to 3½ per centum of the total wages determined by the Board to have been paid to him, with respect to employment after December 31, 1936.

(b) If the Board finds that the correct amount of the old-age benefit payable to a qualified individual during his life under section 202 was less than 3½ per centum of the total wages by which such old-age benefit was measurable, then there shall be paid to his estate a sum equal to the amount, if any, by which such 3½ per centum exceeds the amount (whether more or less than the correct amount) paid to him during his life as old-age benefit.

(c) If the Board finds that the total amount paid to a qualified individual under an old-age benefit during his life was less than the correct amount to which he was entitled under section 202, and that the correct amount of such old-age benefit was 3½ per centum or more of the total wages by which such old-age benefit was measurable, then there shall be paid to his estate a sum equal to the amount, if any, by which the correct amount of the old-age benefit exceeds the amount which was so paid to him during his life.

Payments to Aged Individuals Not Qualified for Benefits

Section 204. (a) There shall be paid in a lump sum to any individual who, upon attaining the age of sixty-five, is not a qualified individual, an amount equal to 3½ per centum of the total wages determined by the Board to have been paid to him, with respect to employment after December 31, 1936, and before he attained the age of sixty-five.

(b) After an individual becomes entitled to any payment under subsection (a), no other payment shall be made under this title in any manner measured by wages paid to him, except that any part of any payment under subsection (a) which is not paid to him before his death shall be paid to his estate.

Amounts of $500 or Less Payable to Estates

Section 205. If any amount payable to an estate under section 203 or 204 is $500.00 or less, such amount may, under regulations prescribed by the Board, be paid to the persons found by the Board to be entitled thereto under the law of the State in which the deceased was domiciled, without the necessity of compliance with the requirements of law with respect to the administration of such estate.

Overpayments During Life

Section 206. If the Board finds that the total amount paid to a qualified individual under an old-age benefit during his life was more than the correct amount to which he was entitled under section 202, and was 3½ per centum or more of the total wages by which such old-age benefit was measurable, then upon his death there shall be repaid to the United States by his estate the amount, if any, by which such total amount paid to him during his life exceeds whichever of the following is the greater: (1) Such 3½ per centum, or (2) the correct amount to which he was entitled under section 202.

Method of Making Payments

Section 207. The Board shall from time to time certify to the Secretary of the Treasury the name and address of each person entitled to receive a payment under this title, the amount of such payment, and the time at which it should be made, and the Secretary of the Treasury through the Division of Disbursement of the Treasury Department, and prior to audit or settlement by the General Accounting Office, shall make payment in accordance with the certification by the Board.

Assignment

Section 208. The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Penalties

Section 209. Whoever in any application for any payment under this title makes any false statement as to any material fact, knowing such statement to be false, shall be fined not more than $1,000.00 or imprisoned for not more than one year, or both.

Definitions

Section 210. When used in this title—

(a) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to $3,000.00 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year.

(b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;
(2) Domestic service in a private home;
(3) Casual labor not in the course of the employer's trade or business;
(4) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;
(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;
(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;
(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(c) The term "qualified individual" means any individual with respect to whom it appears to the satisfaction of the Board that—

(1) He is at least sixty-five years of age; and
(2) The total amount of wages paid to him, with respect to employment after December 31, 1936, and before he attained the age of sixty-five, was not less than $2,000.00; and
(3) Wages were paid to him, with respect to employment on some five days after December 31, 1936, and before he attained the age of sixty-five, each day being in a different calendar year.

TITLE III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

Appropriation

Section 301. For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated, for the fiscal year ending June 30, 1936, the sum of $4,000,000.00, and for each fiscal year thereafter the sum of $49,000,000.00, to be used as hereinafter provided.

Payments to States

Section 302. (a) The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Board under Title

IX, such amounts as the Board determines to be necessary for the proper administration of such law during the fiscal year in which such payment is to be made. The Board's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper administration of such law; and (3) such other factors as the Board finds relevant. The Board shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a), pay, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

Provisions of State Laws

Section 303. (a) The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under Title IX, includes provisions for—

(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices in the State or such other agencies as the Board may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust Fund, in the payment of unemployment compensation, exclusive of expenses of administration; and

(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law.

(b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a);

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

TITLE IV—GRANTS TO STATES FOR AID TO DEPENDENT CHILDREN

Appropriation

Section 401. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy dependent children, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $24,750,000.00, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Board, State plans for aid to dependent children.

State Plans for Aid to Dependent Children

Section 402. (a) A State plan for aid to dependent children must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim with respect to aid to a dependent child is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; and (6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports.

(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a), except that it shall not approve any plan which imposes as a condition of eligibility for aid to dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within the State within one year immediately preceding the application, if its mother has resided in the State for one year immediately preceding the birth.

Payment to States

Section 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to dependent children, for each quarter, beginning with the quarter commencing July 1, 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-third of the total of the sums expended during such quarter under such plan, not counting so much of such expenditure with respect to any dependent child for any month as exceeds $18.00, or if there is more than one dependent child in the same home, as exceeds $18.00 for any month with respect to one such dependent child and $12.00 for such month with respect to each of the other dependent children.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than two-thirds of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of dependent children in the State, and (C) such other investigation as the Board may find necessary.

(2) The Board shall then certify to the Secretary of the Treasury the amount so estimated by the Board, reduced or increased, as the case may be, by any sum by which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Board for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Board, the amount so certified.

Operation of State Plans

Section 404. In the case of any State plan for aid to dependent children which has been approved by the Board, if the Board, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence requirement prohibited by section 402 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 402 (a) to be included in the plan;

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

Administration

Section 405. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $250,000 for all necessary expenses of the Board in administering the provisions of this title.

Definitions

Section 406. When used in this title—

(a) The term "dependent child" means a child under the age of sixteen who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt, in a place of residence maintained by one or more of such relatives as his or their own home;

(b) The term "aid to dependent children" means money payments with respect to a dependent child or dependent children.

TITLE V—GRANTS TO STATES FOR MATERNAL AND CHILD WELFARE

Part 1—Maternal and Child Health Services

Appropriation

Section 501. For the purpose of enabling each State to extend and improve, as far as practicable under the conditions in such State, services for promoting the health of mothers and children, especially in rural areas and in areas suffering from severe economic distress, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $3,800,000. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Chief of the Children's Bureau, State plans for such services.

Allotments to States

Section 502. (a) Out of the sums appropriated pursuant to section 501 for each fiscal year the Secretary of Labor shall allot to each State $20,000, and such part of $1,800,000 as he finds that the number of live births in such State bore to the total number of live births in the United States, in the latest calendar year for which the Bureau of the Census has available statistics.

(b) Out of the sums appropriated pursuant to section 501 for each fiscal year the Secretary of Labor shall allot to the States $980,000 (in addition to the allotments made under subsection (a)), according to the financial need of each State for assistance in carrying out its State plan, as determined by him after taking into consideration the number of live births in such State.

(c) The amount of any allotment to a State under subsection (a) for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to such State under section 504 until the end of the second succeeding fiscal year. No payment to a State under section 504 shall be made out of its allotment for any fiscal year until its allotment for the preceding fiscal year has been exhausted or has ceased to be available.

Approval of State Plans

Section 503. (a) A State plan for maternal and child-health services must (1) provide for financial participation by the State; (2) provide for the administration of the plan by the State health agency or the supervision of the administration of the plan by the State health agency; (3) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are necessary for the efficient operation of the plan; (4) provide that the State health agency will make such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports; (5) provide for the extension and improvement of local maternal and child-health services administered by local child-health units; (6) provide for cooperation with medical, nursing, and welfare groups and organizations; and (7) provide for the development of demonstration services in needy areas and among groups in special need.

(b) The Chief of the Children's Bureau shall approve any plan which fulfills the conditions specified in subsection (a) and shall thereupon notify the Secretary of Labor and the State health agency of his approval.

Payment to States

Section 504. (a) From the sums appropriated therefor and the allotments available under section 502 (a), the Secretary of the Treasury shall pay to each State which has an approved plan for maternal and child-health services, for each quarter, beginning with the quarter commencing July 1, 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-half of the total sum expended during such quarter for carrying out such plan.

(b) The method of computing and paying such amounts shall be as follows:

> (1) The Secretary of Labor shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such investigation as he may find necessary.
>
> (2) The Secretary of Labor shall then certify the amount so estimated by him to the Secretary of the Treasury, reduced or increased, as the case may be, by any sum by which the Secretary of Labor finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Labor for such prior quarter.
>
> (3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Labor, the amount so certified.

(c) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury the amounts to be paid to the States from the allotments available under section 502 (b), and the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, make payments of such amounts from such allotments at the time or times specified by the Secretary of Labor.

Operation of State Plans

Section 505. In the case of any State plan for maternal and child-health services which has been approved by the Chief of the Children's Bureau, if the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds that in the administration of the plan there is a failure to comply substantially with any provision required by section 503 to be included in the plan, he shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State.

Part 2—Services for Crippled Children

Appropriation

Section 511. For the purpose of enabling each State to extend and improve (especially in rural areas and in areas suffering from severe economic distress), as far as practicable under the conditions in such State, services for locating crippled children, and for providing medical, surgical, corrective, and other services and care, and facilities for diagnosis, hospitalization, and aftercare, for children who are crippled or who are suffering from conditions which lead to crippling, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $2,850,000. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Chief of the Children's Bureau, State plans for such services.

Allotments to States

Section 512. (a) Out of the sums appropriated pursuant to section 511 for each fiscal year the Secretary of Labor shall allot to each State $20,000, and the remainder to the States according to the need of each State, as determined by him after taking into consideration the number of crippled children in such State in need of the services referred to in section 511 and the cost of furnishing such services to them.

(b) The amount of any allotment to a State under subsection (a) for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to such State under section 514 until the end of the second succeeding fiscal year. No payment to a State under section 514 shall be made out of its allotment for any fiscal year until its allotment for the preceding fiscal year has been exhausted or has ceased to be available.

Approval of State Plans

Section 513. (a) A State plan for services for crippled children must (1) provide for financial participation by the State; (2) provide for the administration of the plan by a State agency or the supervision of the administration of the plan by a State agency; (3) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are necessary for the efficient operation of the plan; (4) provide that the State agency will make such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports; (5) provide for carrying out the purposes specified in section 511; and (6) provide for co-operation with medical, health, nursing, and welfare groups and organizations and with any agency in such State charged with administering State laws providing for vocational rehabilitation of physically handicapped children.

(b) The Chief of the Children's Bureau shall approve any plan which fulfills the conditions specified in subsection (a) and shall thereupon notify the Secretary of Labor and the State agency of his approval.

Payment to States

Section 514. (a) From the sums appropriated therefor and the allotments available under section 512, the Secretary of the Treasury shall pay to each State which has an approved plan for services for crippled children, for each quarter, beginning with the quarter commencing July 1, 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-half of the total sum expended during such quarter for carrying out such plan.

(b) The method of computing and paying such amounts shall be as follows:

> (1) The Secretary of Labor shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such investigation as he may find necessary.
>
> (2) The Secretary of Labor shall then certify the amount so estimated by him to the Secretary of the Treasury, reduced or increased, as the case may be, by any sum by which the Secretary of Labor finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Labor for such prior quarter.
>
> (3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Labor, the amount so certified.

Operation of State Plans

Section 515. In the case of any State plan for services for crippled children which has been approved by the Chief of the Children's Bureau, if the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds that in the administration of the plan there is a failure to comply substantially with any provision required by section 513 to be included in the plan, he shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State.

Part 3—Child-Welfare Services

Section 521. (a) For the purpose of enabling the United States, through the Children's Bureau, to co-operate with State public-welfare agencies in establishing, extending, and strengthening, especially in predominantly rural areas, public-welfare services (hereinafter in this section referred to as "child-welfare services") for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $1,500,000. Such amount shall be allotted by the Secretary of Labor for use by co-operating State public-welfare agencies on the basis of plans developed jointly by the State agency and the Children's Bureau, to each State, $10,000, and the remainder to each State on the basis of such plans, not to exceed such part of the remainder as the rural population of such State bears to the total rural population of the United States. The amount so allotted shall be expended for payment of part of the cost of district, county or other local child-welfare services in areas predominantly rural, and for developing State services for the encouragement and assistance of adequate methods of community child-welfare organization in areas predominantly rural and other areas of special need. The amount of any allotment to a State under this section for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to such State under this section until the end of the second succeeding fiscal year. No payment to a State under this section shall be made out of its allotment for any fiscal year until its allotment for the preceding fiscal year has been exhausted or has ceased to be available.

(b) From the sums appropriated therefor and the allotments available under subsection (a) the Secretary of Labor shall from time to time certify to the Secretary of the Treasury the amounts to be paid to the States, and the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, make payments of such amounts from such allotments at the time or times specified by the Secretary of Labor.

Part 4—Vocational Rehabilitation

Section 531. (a) In order to enable the United States to co-operate with the States and Hawaii in extending and strengthening their programs of vocational rehabilitation of the physically disabled, and to continue to carry out the provisions and purposes of the Act entitled "An Act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment," approved June 2, 1920, as amended (U. S. C., title 29, ch. 4; U. S. C., Supp. VII, title 29, secs. 31, 32, 34, 35, 37, 39, and 40), there is hereby authorized to be appropriated for the fiscal years ending June 30, 1936, and June 30, 1937, the sum of $841,000 for each such fiscal year in addition to the amount of the existing authorization, and for each fiscal year thereafter the sum of $1,938,000. Of the sums appropriated pursuant to such authorization for each fiscal year, $5,000 shall be apportioned to the Territory of Hawaii and the remainder shall be apportioned among the several States in the manner provided in such Act of June 2, 1920, as amended.

(b) For the administration of such Act of June 2, 1920, as amended, by the Federal agency authorized to administer it, there is hereby authorized to be appropriated for the fiscal years ending June 30, 1936, and June 30, 1937, the sum of $22,000 for each such fiscal year in addition to the amount of the existing authorization, and for each fiscal year thereafter the sum of $102,000.

Part 5—Administration

Section 541. (a) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $425,000, for all necessary expenses of the Children's Bureau in administering the provisions of this title, except section 531.

(b) The Children's Bureau shall make such studies and investigations as will promote the efficient administration of this title, except section 531.

(c) The Secretary of Labor shall include in his annual report to Congress a full account of the administration of this title, except section 531.

TITLE VI—PUBLIC HEALTH WORK

Appropriation

Section 601. For the purpose of assisting States, counties, health districts, and other political subdivisions of the States in establishing and maintaining adequate public-health services, including the training of personnel for State and local health work, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $8,000,000 to be used as hereinafter provided.

State and Local Public Health Services

Section 602. (a) The Surgeon General of the Public Health Service, with the approval of the Secretary of the Treasury, shall, at the beginning of each fiscal year, allot to the States the total of (1) the amount appropriated for such year pursuant to section 601; and (2) the amounts of the allotments under this section for the preceding fiscal year remaining unpaid to the States at the end of such fiscal year. The amounts of such allotments shall be determined on the basis of (1) the population; (2) the special health problems; and (3) the financial needs; of the respective States. Upon making such allotments the Surgeon General of the Public Health Service shall certify the amounts thereof to the Secretary of the Treasury.

(b) The amount of an allotment to any State under subsection (a) for any fiscal year, remaining unpaid at the end of such fiscal year, shall be available for allotment to States under subsection (a) for the succeeding fiscal year, in addition to the amount appropriated for such year.

(c) Prior to the beginning of each quarter of the fiscal year, the Surgeon General of the Public Health Service shall, with the approval of the Secretary of the Treasury, determine in accordance with rules and regulations previously prescribed by such Surgeon General after consultation with a conference of the State and Territorial health authorities, the amount to be paid to each State for such quarter from the allotment to such State, and shall certify the amount so determined to the Secretary of the Treasury. Upon receipt of such certification, the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay in accordance with such certification.

(d) The moneys so paid to any State shall be expended solely in carrying out the purposes specified in section 601, and in accordance with plans presented by the health authority of such State and approved by the Surgeon General of the Public Health Service.

Investigations

Section 603. (a) There is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $2,000,000 for expenditure by the Public Health Service for investigation of disease and problems of sanitation (including the printing and binding of the findings of such investigations), and for the pay and allowances and traveling expenses of personnel of the Public Health Service, including commissioned officers, engaged in such investigations or detailed to co-operate with the health authorities of any State in carrying out the purposes specified in section 601; provided, that no personnel of the Public Health Service shall be detailed to co-operate with the health authorities of any State except at the request of the proper authorities of such State.

(b) The personnel of the Public Health Service paid from any appropriation not made pursuant to subsection (a) may be detailed to assist in carrying out the purposes of this title. The appropriation from which they are paid shall be reimbursed from the appropriation made pursuant to subsection (a) to the extent of their salaries and allowances for services performed while so detailed.

(c) The Secretary of the Treasury shall include in his annual report to Congress a full account of the administration of this title.

TITLE VII—SOCIAL SECURITY BOARD

Establishment

Section 701. There is hereby established a Social Security Board (in this Act referred to as the "Board") to be composed of three members to be appointed by the President, by and with the advice and consent of the Senate. During his term of membership on the Board, no member shall engage in any other business, vocation, or employment. Not more than two of the members of the Board shall be members of the same political party. Each member shall receive a salary at the rate of $10,000 a year and shall hold office for a term of six years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term; and (2) the terms of office of the members first taking office after the date of the enactment of this Act shall expire, as designated by the President at the time of appointment, one at the end of two years, one at the end of four years, and one at the end of six years, after the date of the enactment of this Act. The President shall designate one of the members as the chairman of the Board.

Duties of Social Security Board

Section 702. The Board shall perform the duties imposed upon it by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

Expenses of the Board

Section 703. The Board is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out its functions under this Act. Appointments of attorneys and experts may be made without regard to the civil service laws.

Reports

Section 704. The Board shall make a full report to Congress, at the beginning of each regular session, of the administration of the functions with which it is charged.

TITLE VIII—TAXES WITH RESPECT TO EMPLOYMENT

Income Tax on Employees

Section 801. In addition to other taxes, there shall be levied, collected, and paid upon the income of every individual a tax equal to the following percentages of the wages (as defined in section 811) received by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be 1½ per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(5) With respect to employment after December 31, 1948, the rate shall be 3 per centum.

Deduction of Tax From Wages

Section 802. (a) The tax imposed by section 801 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. Every employer required so to deduct the tax is hereby made liable for the payment of such tax, and is hereby indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

(b) If more or less than the correct amount of tax imposed by section 801 is paid with respect to any wage payment, then, under regulations made under this title, proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in connection with subsequent wage payments to the same individual by the same employer.

Deductibility From Income Tax

Section 803. For the purposes of the income tax imposed by Title I of the Revenue Act of 1934 or by any Act of Congress in substitution therefor, the tax imposed by section 801 shall not be allowed as a deduction to the taxpayer in computing his net income for the year in which such tax is deducted from his wages.

Excise Tax on Employers

Section 804. In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 811) paid by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be 1½ per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(5) With respect to employment after December 31, 1948, the rate shall be 3 per centum.

Adjustment of Employers' Tax

Section 805. If more or less than the correct amount of tax imposed by section 804 is paid with respect to any wage payment, then, under regulations made under this title, proper adjustments with respect to the tax shall be made, without interest, in connection with subsequent wage payments to the same individual by the same employer.

Refunds and Deficiencies

Section 806. If more or less than the correct amount of tax imposed by section 801 or 804 is paid or deducted with respect to any wage payment and the overpayment or underpayment of tax cannot be adjusted under section 802 (b) or 805 the amount of the overpayment shall be refunded and the amount of the underpayment shall be collected, in such manner and at such times (subject to the statutes of limitations properly applicable thereto) as may be prescribed by regulations made under this title.

Collection and Payment of Taxes

Section 807. (a) The taxes imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal-revenue collection. If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 802 (b) and 805) at the rate of one-half of 1 per centum per month from the date the tax became due until paid.

(b) Such taxes shall be collected and paid in such manner, at such times, and under such conditions, not inconsistent with this title (either by making and filing returns, or by stamps, coupons, tickets, books, or other reasonable devices or methods necessary or helpful in securing a complete and proper collection and payment of the tax or in securing proper identification of the taxpayer), as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(c) All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of section 607 of the Revenue Act of 1934, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable with respect to the taxes imposed by this title.

(d) In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

Rules and Regulations

Section 808. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title.

Sale of Stamps by Postmasters

Section 809. The Commissioner of Internal Revenue shall furnish to the Postmaster General without prepayment a suitable quantity of stamps, coupons, tickets, books, or other devices prescribed by the Commissioner under section 807 for the collection or payment of any tax imposed by this title, to be distributed to, and kept on sale by, all post offices of the first and second classes, and such post offices of the third and fourth classes as (1) are located in county seats, or (2) are certified by the Secretary of the Treasury to the Postmaster General as necessary to the proper administration of this title. The Postmaster General may require each such postmaster to furnish bond in such increased amount as he may from time to time determine, and each such postmaster shall deposit the receipts from the sale of such stamps, coupons, tickets, books, or other devices, to the credit of, and render accounts to, the Postmaster General at such times and in such form as the Postmaster General may by regulations prescribe. The Postmaster General shall at least once a month transfer to the Treasury as internal-revenue collections all receipts so deposited together with a statement of the additional expenditures in the District of Columbia and elsewhere incurred by the Post Office Department in performing the duties imposed upon said Department by this Act, and the Secretary of the Treasury is hereby authorized and directed to advance from time to time to the credit of the Post Office Department from appropriations made for the collection of the taxes imposed by this title, such sums as may be required for such additional expenditures incurred by the Post Office Department.

Penalties

Section 810. (a) Whoever buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this title or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device, prescribed by the Commissioner of Internal Revenue under section 807 for the collection or payment of any tax imposed by this title, shall be fined not more than $1,000 or imprisoned for not more than six months, or both.

(b) Whoever, with intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed by the Commissioner of Internal Revenue under section 807 for the collection or payment of any tax imposed by this title, or uses, sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Definitions

Section 811. When used in this title—

(a) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year.

(b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Casual labor not in the course of the employer's trade or business;

(4) Service performed by an individual who has attained the age of sixty-five;

(5) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(7) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individaul.

TITLE IX—TAX ON EMPLOYERS OF EIGHT OR MORE

Imposition of Tax

Section 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

Credit Against Tax

Section 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

Certification of State Laws

Section 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;

(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

Unemployment Trust Fund

Section 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund", hereinafter in this title called the "Fund". The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of oustanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment.

Administration, Refunds, and Penalties

Section 905. (a) The tax imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal-revenue collections. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of one-half of 1 per centum per month from the date the tax became due until paid.

(b) Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this title for such taxable year. Each such return shall be made under oath, shall be filed with the collector of internal revenue for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title. The Commissioner may extend the time for filing the return of the tax imposed by this title, under such rules and regulations as he may prescribe with the approval of the Secretary of the Treasury, but no such extension shall be for more than sixty days.

(c) Returns filed under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

(d) The taxpayer may elect to pay the tax in four equal installments instead of in a single payment, in which case the first installment shall be paid not later than the last day prescribed for the filing of returns, the second installment shall be paid on or before the last day of the third month, the third installment on or before the last day of the sixth month, and the fourth installment on or before the last day of the ninth month, after such last day. If the tax or any installment thereof is not paid on or before the last day of the period fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

(e) At the request of the taxpayer the time for payment of the tax or any installment thereof may be extended under regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury, for a period not to exceed six months from the last day of the period prescribed for the payment of the tax or any installment thereof. The amount of the tax in respect of which any extension is granted shall be paid (with interest at the rate of one-half of 1 per centum per month) on or before the date of the expiration of the period of the extension.

(f) In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

Interstate Commerce

Section 906. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce.

Definitions

Section 907. When used in this title—

(a) The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

(f) The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

(g) The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

Rules and Regulations

Section 908. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title, except sections 903, 904, and 910.

Allowance of Additional Credit

Section 909. (a) In addition to the credit allowed under section 902, a taxpayer may, subject to the conditions imposed by section 910, credit against the tax imposed by section 901 for any taxable year after the taxable year 1937, an amount, with respect to each State law, equal to the amount, if any, by which the contributions, with respect to employment in such taxable year, actually paid by the taxpayer under such law before the date of filing his return for such taxable year, is exceeded by whichever of the following is the lesser—

(1) The amount of contributions which he would have been required to pay under such law for such taxable year if he had been subject to the highest rate applicable from time to time throughout such year to any employer under such law; or

(2) Two and seven-tenths per centum of the wages payable by him with respect to employment with respect to which contributions for such year were required under such law.

(b) If the amount of the contributions actually so paid by the taxpayer is less than the amount which he should have paid under the

State law, the additional credit under subsection (a) shall be reduced proportionately.

(c) The total credits allowed to a taxpayer under this title shall not exceed 90 per centum of the tax against which such credits are taken.

Conditions of Additional Credit Allowance

Section 910. (a) A taxpayer shall be allowed the additional credit under section 909, with respect to his contribution rate under a State law being lower, for any taxable year, than that of another employer subject to such law, only if the Board finds that under such law—

(1) Such lower rate, with respect to contributions to a pooled fund, is permitted on the basis of not less than three years of compensation experience;

(2) Such lower rate, with respect to contributions to a guaranteed employment account, is permitted only when his guaranty of employment was fulfilled in the preceding calendar year, and such guaranteed employment account amounts to not less than 7½ per centum of the total wages payable by him, in accordance with such guaranty, with respect to employment in such State in the preceding calendar year;

(3) Such lower rate, with respect to contributions to a separate reserve account, is permitted only when (A) compensation has been payable from such account throughout the preceding calendar year, and (B) such account amounts to not less than five times the largest amount of compensation paid from such account within any one of the three preceding calendar years, and (C) such account amounts to not less than 7½ per centum of the total wages payable by him (plus the total wages payable by any other employers who may be contributing to such account) with respect to employment in such State in the preceding calendar year.

(b) Such additional credit shall be reduced, if any contributions under such law are made by such taxpayer at a lower rate under conditions not fulfilling the requirements of subsection (a), by the amount bearing the same ratio to such additional credit as the amount of contributions made at such lower rate bears to the total of his contributions paid for such year under such law.

(c) As used in this section—

(1) The term "reserve account" means a separate account in an unemployment fund, with respect to an employer or group of employers, from which compensation is payable only with respect to the unemployment of individuals who were in the employ of such employer, or of one of the employers comprising the group.

(2) The term "pooled fund" means an unemployment fund or any part thereof in which all contributions are mingled and undivided, and from which compensation is payable to all eligible individuals, except that to individuals last employed by employers

with respect to whom reserve accounts are maintained by the State agency, it is payable only when such accounts are exhausted.

(3) The term "guaranteed employment account" means a separate account, in an unemployment fund, of contributions paid by an employer (or group of employers) who

> (A) guarantees in advance thirty hours of wages for each of forty calendar weeks (or more, with one weekly hour deducted for each added week guaranteed) in twelve months, to all the individuals in his employ in one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within twelve or less consecutive calendar weeks), and
>
> (B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties,

from which account compensation shall be payable with respect to the unemployment of any such individual whose guaranty is not fulfilled or renewed and who is otherwise eligible for compensation under the State law.

(4) The term "year of compensation experience", as applied to an employer, means any calendar year throughout which compensation was payable with respect to any individual in his employ who became unemployed and was eligible for compensation.

TITLE X—GRANTS TO STATES FOR AID TO THE BLIND

Appropriation

Section 1001. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals who are blind, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $3,000,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Social Security Board, State plans for aid to the blind.

State Plans for Aid to the Blind

Section 1002. (a) A State plan for aid to the blind must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim for aid is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; (6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act.

(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a), except that it shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan—

> (1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or
>
> (2) Any citizenship requirement which excludes any citizen of the United States.

Payment to States

Section 1003. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing July 1, 1935, (1) an amount, which shall be used exclusively as aid to the blind, equal to one-half of the total of the sums expended during such quarter as aid to the blind under the State plan with respect to each individual who is blind and is not an inmate of a public institution, not counting so much of such expenditure with respect to any individual for any month as exceeds $30, and (2) 5 per centum of such amount, which shall be used for paying the costs of administering the State plan or for aid to the blind, or both, and for no other purpose.

(b) The method of computing and paying such amounts shall be as follows:

> (1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of clause (1) of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such clause, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the

difference is expected to be derived, (B) records showing the number of blind individuals in the State and (C) such other investigation as the Board may find necessary.

(2) The Board shall then certify to the Secretary of the Treasury the amount so estimated by the Board, reduced or increased, as the case may be, by any sum by which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State under clause (1) of subsection (a) for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Board for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Board, the amount so certified, increased by 5 per centum.

Operation of State Plans

Section 1004. In the case of any State plan for aid to the blind which has been approved by the Board, if the Board, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1002 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1002 (a) to be included in the plan;

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

Administration

Section 1005. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $30,000, for all necessary expenses of the Board in administering the provisions of this title.

Definition

Section 1006. When used in this title the term "aid to the blind" means money payments to blind individuals.

TITLE XI—GENERAL PROVISIONS

Definitions

Section 1101. (a) When used in this Act—

(1) The term "State" (except when used in section 531) includes Alaska, Hawaii, and the District of Columbia.

(2) The term "United States" when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

(3) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(4) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(6) The term "employee" includes an officer of a corporation.

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Whenever under this Act or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this Act the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(d) Nothing in this Act shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this Act, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.

Rules and Regulations

Section 1102. The Secretary of the Treasury, the Secretary of Labor, and the Social Security Board, respectively, shall make and publish such rules and regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which each is charged under this Act.

Separability

Section 1103. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

Reservation of Power

Section 1104. The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress.

Short Title

Section 1105. This Act may be cited as the "Social Security Act".

Approved, August 14, 1935.

Appendix C

LAW OPINION

Mr. H. L. Derby, Chairman,
New Jersey Social Security Commission:

Dear Mr. Derby—We submit to you and to the Commission our opinion concerning the constitutionality of the Federal Social Security Act of 1935 and the constitutionality of legislation by the State of New Jersey which would comply with the program involved in the Federal statute.

It is not the purpose to discuss the economic consequences of the Federal statute except as consideration of those subjects may be necessary in determining questions of constitutionality.

General Description of Federal Social Security Act

It is difficult to summarize the Federal Social Security Act because it contains many divers features. The main features, however, may be divided into two classes: First, those which depend upon or are attached to the relationship of employer and employee. (This includes old age annuities and unemployment insurance and will involve Titles II, III, VIII, and IX of the Act.) Second, those features which do not depend upon the past, present or future relationship of employer and employee, but depend upon the need of the beneficiaries. This includes immediate old age assistance, maternal and child welfare services for crippled children, child welfare, vocational rehabilitation, public health work and aid to the blind as included in Titles I, IV, V, VI and X of the Act. Titles VII and XI of the Act are merely general provisions relating to the other features.

The constitutional validity of the provisions concerning old age annuities and unemployment insurance which depend upon or are attached to the relation of employer and employee will first be considered and tested by the provisions of the Constitution of the United States.

General Scope of Constitutional Powers of the Federal Government to Regulate and to Tax the Relation of Employer and Employee

(a) Federal power of regulation of relation of employer and employee.

It may be stated broadly that the Federal power to regulate the relation of employer and employee extends only to those fields over which the people by the Constitution gave to the Federal Government authority of general regulation. Among the principal matters within such fields we find interstate and foreign commerce, maritime pursuits and banking. We do not find production nor do we find such trade or commerce as is local to a particular State. Another field of Federal authority is territorial in its nature and extends. for example, to the District of Columbia and other locations within exclusive Federal control.

The entire field of the relation of employer and employee is certainly not included within the Federal power. By far the larger part is reserved to the States or the people by the Tenth Amendment to the Constitution of the United States.

(b) Taxation of relation of employer and employee.

Until very recently the Federal Government has not singled out the relation of employer and employee as the basis for the imposition of a specific tax. So far as we have been able to ascertain, the only instances have been the attempt to levy contributions from railroads under the law which was declared unconstitutional by the United States Supreme Court in the case of Railroad Retirement Board vs. Alton, 79 L. Ed. Adv. Op. 222, the substitute for that law and the Federal Social Security Act here under consideration. The fact that a new subject or basis of taxation has been singled out in the Federal Social Security Act does not, of itself, prove the invalidity of the taxes; but it does provoke inquiry as to whether the so-called taxes are in truth taxes or taking of property without due process of law or penalties to enforce regulation and if penalties whether the regulation be within the Federal power, and if they be in truth taxes whether they are direct taxes or excise taxes.

We turn to a detailed discussion of the question of the Federal power to regulate and to tax the relation of employer and employee.

The Federal Government Has No Power to Regulate Employer and Employee in Manufacture, or Trade or Commerce Local to a State

At the outset it is felt advisable to present certain fundamental matters regarding the nature of government in the United States under the Constitution.

It is elementary that the government of the United States is one of delegated and limited powers, obtaining its existence and authority altogether from the Constitution, and that it has no right to exercise any powers of government beyond those specified in the Constitution and reasonably incidental thereto. That such is the law there is no reasonable room for doubt. To make certain that there could be no doubt on this subject the Ninth and Tenth Amendments were placed in the Constitution. They read as follows:

> "Amendment IX. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.
>
> "Amendment X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

A few of the authorities for the foregoing statements are:

United States vs. Harris, 106 U. S. 629; 27 L. Ed. 290;
United States vs. Cruikshank, 92 U. S. 543; 23 L. Ed. 588;
Kansas vs. Colorado, 206 U. S. 46; 51 L. Ed. 957;
Ex-Parte Merriman, 17 Fed. Case No. 9487;
Schechter vs. United States, 79 U. S. Adv. Op. 888.

While the sponsors of the Social Security Act did not seem to attempt to justify it with the argument that it was emergency legislation, it may be noted that such an argument would have amounted to nothing. The Schechter case recognized that a plea of emergency could not create a power not to be found in the Constitution. In so doing it merely reiterated what was said long ago in Ex-Parte Milligan, 71 U. S., page 2; 18 L. Ed. 281, where it is said:

> "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; * * *"

In one of the cases above cited, Kansas vs. Colorado, 206 U. S. 46; 51 L. Ed. 957, the Supreme Court repudiated the idea that there are any legislative powers affecting the nation as a whole which belong to it, although not expressed or implied in the grant of powers found in the Constitution. Accordingly there is no valid ground for a suggestion that the Federal Government has any regulatory power over a matter because it is of general importance to the whole nation, and at the same time a matter over which the States are in practical fact unable to exercise a controlling power. In other words, the doctrine of construction generally ascribed to James Wilson, of Pennsylvania, was in substance shown by Kansas vs. Colorado to have no validity.

Examination of the Social Security Act reveals that its provisions regulate the relations of employer and employee. The amount that the employee shall get when paid is regulated to the extent that the employer is obliged to make a deduction from the employee's pay, the duties of the employer are interfered with not alone in making the deduction just mentioned, but in keeping various records and in making payments based on payroll, as well as otherwise. Nothing confines the statute to interstate or foreign commerce. It purports to reach employers even if they are engaged in manufacture and production or local trade and business.

The question then arises: Where in the Constitution is there any clause conferring the regulatory power over employer and employee which the Social Security Act attempts to exercise? The answer is that there is no clause in the Constitution which confers upon Congress the power to regulate the relation of employer and employee in manufacture or trade or commerce local to a State. From the many cases so holding it will suffice to cite Schechter vs. United States, 79 U. S. Adv. Op. 888, and to note that in Howard vs. Illinois Central R. R. Co., 207 U. S. 463; 52 L. Ed. 297, it was held that a regulation in an act of Congress which extended to local matters as well as matters of interstate and foreign commerce goes beyond the power of Congress and violates the Ninth and Tenth Amendments.

The last named case involved the so-called first Federal Employer's Liability Act. Since that act undertook to reach employments both in interstate commerce and intrastate commerce, it was held unconstitutional. The case further holds that a concern by engaging in interstate commerce does not thereby submit all its affairs to the regulatory powers of Congress.

Regulation of the relation of employer and employee cannot be brought within the field of congressional power by making the regulation masquerade as a tax. Of course, when the matter is one in which the Legislature has full power of taxation there is no valid objection to exacting discouraging rates of tax, McCray vs. United States, 195 U. S. 26; 49 L. Ed. 78; Alaska Fish Co. vs. Smith, 255 U. S. 49; 65 L. Ed. 489, but that a regulation of matters not within the congressional power is void though cloaked in the guise and pretext of a tax is shown by the Child Labor Tax case (Bailey vs. Drexel Furniture Co., 259 U. S. 20; 66 L. Ed. 817). The case of Linder vs. United States, 268 U. S. 5; 69 L. Ed. 819, states the rule in this regard as follows:

> "Congress cannot, under the pretext of executing delegated power, pass laws for the accomplishment of objects not intrusted to the Federal Government. And we accept as established doctrine that any provision of an act of Congress ostensibly enacted under power granted by the Constitution, not naturally and reasonably adapted to the effective exercise of such power, but solely to the achievement of something plainly within power reserved to the States, is invalid, and cannot be enforced."

As was said in United States vs. One Ford Automobile, 272 U. S. 321; 71 L. Ed. 321, the fact that a statute uses the word "tax" does not make an imposition a tax if in substance it is something else.

Other cases where laws were held invalid, because though passed under the guise of executing powers delegated to Congress, they actually went beyond the delegated power, are:

Hill vs. Wallace, 259 U. S. 44; 66 L. Ed. 822;
Lipke vs. Lederer, 259 U. S. 557; 66 L. Ed. 1061;
Trusler vs. Crooks, 269 U. S. 475; 70 L. Ed. 365.

It is not seen how in the face of the Ninth and Tenth Amendments of the Federal Constitution and the authorities above mentioned, there is any power in Congress to make the regulations of employer and employee in manufacture and production and local trade or business which the Social Security Act purports to make, unless support can be found for the statute in the taxing clause which will be discussed under the next heading.

The Taxing Clause of the United States Constitution Does Not Authorize Certain Provisions of the Social Security Act and They Are Repugnant to the Due Process Clause of the Fifth Amendment

The two constitutional provisions above mentioned are discussed together because the latter has a bearing upon the significance of the former.

The Social Security Act purports to impose three taxes, two by Title VIII headed "Taxes with respect to employment," and one by Title IX headed "Taxes on employers of eight or more."

The first is imposed by Section 801 upon employees. The statute says, in addition to other taxes, there shall be levied, collected and paid upon the income of every individual a tax equal to the following percentages of the wages (as defined in Section 811) received by him after December 31st, 1936, with respect to employment (as defined in Section 811) after such date. (Here follows statement of rate beginning with 1% for employment during 1937 and gradually increasing so that after December 31, 1948, the rate shall be 3%.)

This tax is to be deducted by the employer from wages (Section 802 (a)) which the employee may not deduct from his income in filing his return under the general income tax law (Section 803).

The other so-called tax which Title VIII purports to impose is provided for by Section 804, which refers to it as "an excise tax, with respect to having individuals in his employ." This begins at 1% with respect to employment during the calendar year 1937 and gradually increases so that after December 31, 1948, the rate shall be 3%. This tax is to be collected as internal revenue collections and subject to the requirements and benefits set forth by Section 807 et seq. By Section 811 the terms, wages and employment are defined so that wages as used in this title mean remuneration not in excess of $3,000.00 and the term employment means any service within the United States by an employee, except in certain specified kinds of work. In substance the definition excludes certain employment from the operation of the tax. There is nothing in Title VIII which says specifically for what the taxes above-mentioned are to be used.

Title IX headed "Tax on employers of eight or more" purports to impose on employers what the statute called "an excise tax" with respect to having individuals in his employ. (Section 901.) This tax is to begin at 1% for employment during 1936 and gradually increases so that with respect to employment after December 31, 1937, the rate shall be 3%.

By Section 902 the taxpayer may credit against the tax imposed by Section 901 the amount of contributions made to a State unemployment fund meeting Federal requirements, among which is the requirement that all moneys paid into a State fund be immediately paid into the Federal Treasury, but the total credit shall not exceed 90% of the tax imposed by Section 901. This so-called credit does not reduce the taxpayer's payments; it simply provides a different way of paying the same amount.

By sections 909 and 910 the taxpayer (provided the State allows credit rating for stabilized employment) may under certain conditions receive an additional credit which will reduce the taxpayer's total payments. This reducton, however, cannot, under the terms of the act, be equivalent to the stabilized employment and in no event shall total credits exceed 90% of the Federal tax under Title IX.

The tax of Title IX differs from the tax of Title VIII in that it is imposed only on employers of eight or more; it is imposed on the entire payroll of those employers including amounts earned by an employee in excess of $3,000.00 per year and it exempts certain wages paid to members of the employer's family (see Section 907).

Title II headed "Federal Old Age Benefits" provides that the Secretary of the Treasury shall invest moneys to the credit of an old age reserve account, and that payments after January 1, 1942, shall be made to persons who shall then or thereafter attain the age of 65 years and who are "qualified individuals" as defined in Section 201. Section 203 provides for payment upon death before age 65. An analysis of the plan will disclose that it is to be Federally operated without State participation. Furthermore, the plan will so operate that certain persons will receive more than is paid in by their tax or their employer's tax; it will result that money will be taken from the employers and the younger workers and paid to the older workers. This will take the money of both the employers and the younger workers to make charity payments to the older workers.

A comparison of the definitions in Section 210 and Section 811 will show that the employments which will place persons in the class who may get Federal Old Age Benefits, are the same as those in respect of whom Title VIII purports to impose a tax.

The taxing clause of the United States Constitution is Article I, Section 8, Clause 1, which provides:

> "The Congress shall have power to lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defense and general welfare of the United States, but all duties, imposts and excises shall be uniform throughout the United States."

We have heard this clause suggested as the authority for the so-called excises which the Social Security Act purports to impose. Those who argue that the so-called excises are constitutional base their opinion upon the existence of this clause and the fact that the statute refers to two of the taxes as excises.

Other provisions in the Constitution as to taxes are:

> Article I, Section 2, Clause 3—"Representatives and direct taxes shall be apportioned among the several States * * * according to their respective numbers, * * *"

> Article I, Section 9, Clause 4—"No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken."

The Sixteenth Amendment to the Constitution provides:

> "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

The tax on employees is claimed to be supported by the Sixteenth Amendment which allows income taxes, but it is believed that it would not be asserted that the income tax on employees would stand unless the other taxes are valid.

It is desirable to consider whether the taxing provisions of the statute are capable of separation from the other provisions. If they are not for reasons presently to be pointed out the so-called excises are invalid.

The titles in the act which purport to impose the taxes do not particularly specify for what purposes the taxes imposed are to be used. But the tax on employers of eight or more is coupled with a provision that allows a taxpayer a so-called credit up to 90% against the Federal tax, equal to what the taxpayer pays into a State plan meeting Federal approval. The definition in Title II compared with the definition in Title VIII shows that the employments which will place persons in a class who may get Federal Old Age Benefits are the same as those in respect of whom Title VIII proposes to impose a tax. All sums collected under State unemployment insurance plans which will meet Federal approval must be turned over to the unemployment trust fund in the Treasury of the United States. The credit allowed to employers on Federal tax is for sums paid in State unemployment funds. Except for the provisions regarding the taxes there is no suggestion of how all the other provisions involving expense are to be paid for contained in the act and the history of the act shows that the payments of insurance benefits should be self-sustaining. The "general provisions" title applies to all titles. It would seem that the courts are bound to recognize that the act as a whole attempts to regulate the relation of employer and employee and is one unified plan to establish a nation-wide scheme for unemployment insurance and old age benefits of which the tax provisions are a part, as well as the coercion of States into accepting Federal requirements for governing their internal matters, although there is no clause in the Constitution granting to Congress the power to legislate on the several subjects to which the Social Security Act relates. In other words, it is not believed that the taxing provisions can be lifted from their context and totally disconnected from the other provisions.

It seems to be quite commonly understood that the establishment of a unified program is the purpose of the act and its history is replete with statements by its sponsors from the President down, indicating that such is the fact.

President Roosevelt, in his message transmitting to Congress the proposals for legislation in respect of social security, said:

> "Three principles should be observed in legislation on this subject. In the first place, the system adopted, except for the money necessary to initiate it, should be self-sustaining in the sense that funds for the payment of insurance benefits should not come from the proceeds of general taxation."

Since proceeds of general taxation are not to be used, it is obvious that the proceeds of the special payroll taxes are to be used for carrying out the purposes of the legislation.

In the same message the President said:

> "All of those who participated in this notable task of planning this major legislative proposal are ready and willing, at any time, to consult with and assist in any way the appropriate congressional committees and members, with respect to detailed aspects."

The President, in transmitting the report of the Committee on Economic Security, concluded by saying:

> "I strongly recommend action to obtain the objectives sought in this report."

Throughout the report it is made plain that the moneys which are to come from payrolls are to be the basis for the old age annuities and for the unemployment insurance. The report of that committee (transmitted to Congress by the President) in referring to unemployment assurance states:

> "While we favor unemployment compensation in cash, we believe that it should be provided for limited periods on a contractural basis and without governmental subsidies. Public funds should be devoted to providing work, rather than to introduce a relief element into what should be strictly an insurance system."

From the foregoing it is plain that public funds are not to be used for unemployment compensation nor as governmental subsidies therefor.

The Committee further said:

> "We recommend as essential the imposition of a uniform payroll tax against which credits shall be allowed to industries in States that shall have passed unemployment-compensation laws."

The Committee, in speaking of old age security, stated that they suggested as complementary measures "noncontributory old age pensions, compulsory contributory annuities and voluntary contributory annuities, all to be applicable on retirement at age 65 or over."

Congress followed the recommendations as to old age pensions and compulsory contributory annuities. It discarded the suggestion of voluntary contributory annuities. As to what was meant by a contributory annuity the report states:

> "The satisfactory way of providing for the old age of those now young is a contributory system of old age annuities. This will enable younger workers, with matching contributions from their employers, to build up a more adequate old-age protection than it is possible to achieve with noncontributory pensions based upon a means test."

It is plain from this that the taxes indicated by Title VIII of the Act are intended to "build up a more adequate old age protection." This protection is specified in Title II of the Act.

The report further, in speaking of unemployment compensation, defines it as follows:

> "It is a device through which reserves are accumulated during periods of employment to be paid out in periods of unemployment."

The Committee further stated in regard to unemployment compensation that they preferred "a tax credit device to one in which the tax would be wholly collected and then remitted, as grants-in-aid, to the States, because under the latter system the States would not have self-supporting laws of their own, and as with all compensation having its source in Federal grants there would be great and constant pressure for longer grants exceeding the money raised by the tax, with a consequent confusion of compensation and relief.

Turning again to old age security, the report says:

> "An adequate old-age security program involves a combination of noncontributory pensions and contributory annuities. * * *" Contributory annuities are unquestionably preferable to noncontributory pensions. They come to the workers as a right, whereas the noncontributory pensions must be conditioned upon a "means" test."

Again the report plainly shows that the contribution of the worker (and the only contribution provided is the tax) is to be specifically applied to and used for the payment of the annuity.

The report also states in regard to the annuities as follows:

> "The compulsory contributions are to be collected through a tax on pay rolls and wages, to be divided equally between the employers and employees."

And further on in the report it is said:

> "Contributions by the employees represent a self-respecting method through which workers make their own provisions for old age."

In speaking of the unemployment service the report says:

> "The larger funds required will come from proportion of the Federal pay roll tax retained for administrative purposes."

The President's message and the Bill to carry it out came under consideration of the Committee on Ways and Means of the House of Representatives at hearings commencing January 21 and ending February 12, 1935.

The first witness before the Committee was Dr. E. E. Witte, Executive Director of the Committee on Economic Security. In making certain general comments, he stated:

> "The total appropriations proposed in this bill amount to $98,500,000 in the fiscal year 1936, and $218,500,000 in subsequent years. Offsetting these appropriations, will be the receipts from taxes which are imposed in connection with unemployment compensation and old-age annuities. Unemployment compensation will not involve any cost on general revenues, and for a considerable period to come the Federal grants-in-aid to States for old-age pensions can be borrowed from the amounts collected by the Federal Government through the system of compulsory old-age annuities."

In the report of the hearings before the Committee on Ways and Means of the House of Representatives, Seventy-fourth Congress, First Session on H. R. 4120 at page 63, Mr. Lewis and the Chairman of the Committee are reported as follows:

> "Mr. Jenkins: Is there any difference between the Doughton Bill and the Lewis Bill? We have both of them before us here.
>
> Mr. Lewis: None at all that I know of, it is the Administration Bill. That is my view.
>
> The Chairman: It is understood to be an administrative measure, so far as the chair is advised."

In connection with the statement of the President, it should be borne in mind that Article II, Section 3, provides that he shall from time to time give to the Congress information of the State of the Union and recommend to their consideration such measures as he shall judge necessary and expedient.

In view of the foregoing, it seems vain to base hopes that the statute's constitutionality will be upheld on any assumption that the Supreme Court will be unable to see on the face of the statute, the connection which has been so generally claimed to exist. It is accordingly believed that the tax clause must be read in connection with the other provisions. Upon that assumption the questions as to constitutionality above given will be discussed. This brings us to the phrase "general welfare" as used in the taxing clause. That the words "and provide for the common defense and general welfare of the United States" are limitations on the taxing power of the United

States is the view taken by Story on the Constitution, Sections 907-908 and 1 Willoughby on the Constitution, Section 22.

A striking thing in connection with the expression "general welfare" in the taxing clause is the fact that it is followed by the words, "of the United States." The "United States" is a government as distinguished from the people whose instrument it is.

Having in mind its limited and delegated character as contrasted with the quasi sovereignty of the State which embraces all legislative fields not delegated by the Federal Constitution or restricted by that instrument, or the State Constitution, the scope of governmental purposes and general welfare of the United States cannot accurately be measured by State Court decisions having to do with whether certain uses of property are private uses or for governmental purposes of the State. "Governmental purposes" of the State are not the same as governmental purposes of the nation.

The limitation which the taxing clause imposes was discussed in a sugar bounty case, United States ex rel, the Miles Planting & Manufacturing Co., vs. Carlisle, 5 App. Cas. D. C. 138. At page 155 the Court said:

> "In our judgment the true limitation of the power to impose taxes, conferred by the foregoing clause, is that the purpose must be public, that is to say, governmental."

At page 157 it is said:

> "If then, as we have seen from the cases cited, the legislature of a State has no implied power to grant subsidies or bounties to individuals, though, in a sense, the general welfare may be prompted thereby, a fortiori the Congress of the United States has no such power.

At page 158:

> "We think the authorities cited above established beyond question that the power of taxation, in all free governments like ours, is limited to public objects and purposes governmental in their nature. No amount of incidental public good or benefit will render valid taxation, or the appropriation of revenue to be derived therefrom, for a private purpose."

The Supreme Court of the United States on Monday, January 6, 1936, delivered its opinion in United States of America vs. William M. Butler et al., familiarly known as the "Hoosac Mills Case", holding unconstitutional the Agricultural Adjustment Act, familiarly known as "AAA."

The grounds upon which that decision proceeded completely sustains this memorandum in its position that the Social Security Act is beyond the power of Congress and unconstitutional.

The AAA levied a processing tax for the purpose of paying rental or benefit payments to farmers for crop curtailment. The question was the validity of this tax. While the Supreme Court, in passing, adopted Judge Story's view of the meaning of the welfare clause, it found that meaning insufficient to sustain the validity of the tax because the exaction was not a tax, because for a group instead of support of the Government, and could not be sustained as a tax under the welfare clause, and it was not in the exercise of the regulatory power conferred on Congress but, on the contrary, undertook to regulate intrastate affairs. A correct analysis of the decision may be briefly made as follows:

(a) Referring to the welfare clause, the Court said:

> "It is not contended that this provision grants power to regulate agricultural production upon the theory that such legislation would promote the general welfare. The government concedes that the phrase 'to provide for the general welfare' qualifies the power 'to lay and collect taxes'.
>
> "The true construction undoubtedly is that the only thing granted is the power to **tax** for the purpose of providing funds for payment of the nation's debts and **making provision** for the general welfare."
>
> "These words cannot be meaningless, else they would not have been used. The conclusion must be that they were intended to limit and define the power to raise and expend money. How shall they be construed to effectuate the intent of the instrument?"
>
> "Study of all these leads us to conclude that the reading advocated by Mr. Justice Story is the correct one."
>
> "While, therefore, the power to **tax** is not unlimited, its confines are set in the clause which confers it, and not in those of Section 8 which bestow and define the legislative powers of the Congress. It results that the power of Congress to authorize expenditures of public monies **for public purposes** is not limited by the direct grants of legislative power found in the Constitution."
>
> "But the adoption of the broader construction leaves the power to spend subject to limitations."
>
> "Every presumption is to be indulged in favor of faithful compliance by Congress with the mandates of the fundamental law."
>
> "When such a contention comes here we naturally require a showing that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress."
>
> "But despite the breadth of the legislative discretion our duty to hear and to render judgment remains. If the statute plainly violates the stated principle of the Constitution we must so declare."
>
> "It is inaccurate and misleading to speak of the exaction from processors prescribed by the challenged act as a tax, or to say that as a tax it is subject to no infirmity. A tax in the general understanding of the term and as used in the Constitution signifies an exaction for the support of the government. The word has never been thought to connote the expropriation of money from one group for the benefit of another."

> "It does not follow that as the act is not an exertion of the taxing power and the exaction not a true tax, the exaction is void or the exaction uncollectible. For, to paraphrase what was said in the Head Money Cases (112 U. S. 580, 596), **if this is an expedient regulation by Congress of a subject within one of its granted powers** 'and the end to be attained is one falling within **that** power, the act is not void, because, within a loose and more extended sense than was used in the Constitution' the exaction is called a tax."
>
> "In the Child Labor Tax Case (259 U. S. 20) and in Hill vs. Wallace (259 U. S. 44) this Court had before it statutes which purported to be taxing measures. But their purpose was found to be to regulate the conduct of manufacturing and trading, not in interstate commerce, but in the States—matters not within any power conferred upon Congress by the Constitution—and the levy of the tax a means to force compliance. The Court held this was not a constitutional use, but an unconstitutional abuse, of the power to tax."
>
> "If in lieu of compulsory regulation of subjects within the States' reserved jurisdiction, which is prohibited, the Congress could invoke the taxing and spending power as a means to accomplish the same end, Clause 1 of Section 8 of Article I would become the instrument for total subversion of the governmental powers reserved to the individual States."

(b) The Court then takes up the question, "if the taxing power may not be used as the instrument to enforce a regulation of matters of State concern" may it be "employed to raise the money necessary to purchase a compliance which the Congress is powerless to command?"

The answer to this it finds to be, first, that the act by reason of its various terms is coercive, and, second,

> "but if the plan were one for purely voluntary co-operation it would stand no better so far as federal power is concerned. At best it is a scheme for purchasing with federal funds submission to federal regulation of a subject reserved to the States."

It will thus be seen that the exactions imposed by the Social Security Act cannot be sustained, in view of the AAA decision, which merely carried forward in a logical way the decision in the Railroad Retirement Act case, because—

(1) such an exaction is not a tax and therefore not within the welfare clause, which simply expresses the purpose of the tax, because it is for a group and not the support of the government; and

(2) it cannot be sustained as a regulation because it concerns purely State affairs and relations between persons which are purely State affairs and such exactions cannot be used for those purposes, either by way of coercion or purchase; in other words, thereby the States, the employers and the employees can be neither forced nor induced to a course of action.

Cooley in his Constitutional Limitations, 7th Edition, at page 507, says:

> "But there is no rule or principle known to our system under which private property can be taken from one person and transferred to another for the private use and benefit of such other, whether by general law or by State enactment."

In Pennsylvania Coal Co. vs. Mahon, 260 U. S. 393, 416; 67 L. Ed. 322, 326, Justice Holmes, delivering the opinion for the court, said:

> "In general it is not plain that a man's misfortunes or necessities will justify his shifting the damages to his neighbor's shoulders (citing cases). We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."

A tax cannot be levied for a private purpose, because the taking of private property for private use is considered violative of the Fifth Amendment of the Constitution. In this connection it seems impossible to draw any other conclusion from Railroad Retirement Board vs. Alton, 79 L. Ed. Adv. Op., page 803, 79 L. Ed. 1468; 55 Sup. Ct. Rep. 758; 295 U. S. 330, than that the taxes imposed by the Social Security Act are repugnant to the Fifth Amendment. Among the many pertinent statements in that opinion are the following:

> "There is no warrant for taking the property or money of one and transferring it to another without compensation, whether the object of the transfer be to build up the equipment of the transferee or to pension its employees."

Speaking of the provisions of the statute:

> "It is not apparent that they are really and essentially related solely to the social welfare of the worker, and therefore remote from any regulation of commerce as such. We think the answer is plain. These matters obviously lie outside the orbit of congressional power. The answer of the petitioners is that not all such means of promoting contentment have such a close relation to interstate commerce as pensions. This is in truth no answer, for we must deal with the principle involved and not the means adopted."

* * *

> "We think it cannot be denied, and, indeed, is in effect admitted, that the sole reliance of the petitioners is upon the theory that contentment and assurance of security are the major purposes of the act. We cannot agree that these ends if dictated by statute, and not voluntarily extended by the employer, encourage loyalty and continuity of service. We feel bound to hold that a pension plan thus imposed is in no proper sense a regulation of the activity of interstate transportation. It is an attempt for social

> ends to impose by sheer fiat noncontractual incidents upon the relation of employer and employee, not as a rule or regulation of commerce and transportation between the States, but as a means of assuring a particular class of employees against old age dependency. This is neither a necessary nor an appropriate rule or regulation affecting the due fulfillment of the railroads' duty to serve the public in interstate transportation."

All the justices seem to have agreed that it was necessary that the enforced contributions be regulations of commerce if they were to be upheld. In the dissenting opinion it is recognized that the prevailing opinion "denies to Congress the power to pass any compulsory pension act for railroad employees." If Congress has no power to create pension systems and old age benefits for railroad employees, it seems inconceivable that there is any power to do so with respect to all employees.

It is no answer to say that the railroad pension provisions were attempted to be sustained under the commerce clause while the present impositions may be sought to be upheld under the taxing clause. If plans of the character involved in that case are void because violative of the Fifth Amendment, it would make no difference what clause of the Constitution were pointed to as a supposed basis of the contributions.

In Citizens Saving & Loan Association vs. Topeka, 20 Wallace 655; 22 L. Ed. 455, it was held that the taking of the property of one owner and giving it to another was invalid and on the authority of that case and the Railroad Retirement Board vs. Alton R. R. it is believed that the tax upon employers made by the Social Security Act should be deemed invalid.

To state the matter briefly, in our opinion the so-called excises are not taxes at all, but attempts to regulate matters outside the orbit of congressional power and the taking of private property for private use in violation of the due process clause of the Fifth Amendment.

Even if the tax provisions could be extracted from their context, the question would still remain as to whether the exactions are excises or direct taxes. From what is said above, it is evident that capitations and other direct taxes must be laid in proportion to the census, except that taxes on incomes may be laid and collected without apportionment among the several States and without regard to a census. We do not now discuss this question further than to say that assuming these exactions from employers to be taxes there is substantial ground for considering them to be direct taxes. It seems unnecessary to pursue this subject in view of our conclusion that the exactions are not really taxes.

In respect of the tax upon employers under Title IX we have seen statements to the effect that the provision that credit may be allowed by the amount paid into State funds (Section 902) (the so-called offset device) does not destroy the uniformity required by the Constitution of an excise. For this view Florida vs. Mellon, 273 U. S. 12; 71 L. Ed. 511, has been cited.

Such argument, of course, skips the questions of whether the tax is a direct tax rather than an excise or is an attempt at regulation of matters outside Federal power, and whether, if an excise, it is founded upon a basis repugnant to the Fifth Amendment.

Even if these questions and the others above suggested could be disregarded, we would have some hesitation about saying that Florida vs. Mellon would sustain the so-called offset device as applied to this statute. We find difficulty in determining the exact effect of the last named case. One writer has referred to it as the Strange Case of Florida vs. Mellon, and Willoughby on the Constitution of the United States, Second Edition, Section 395, gives reasons why, to his mind, the case made an unduly summary treatment of the contention as to lack of uniformity exhibited by the Federal tax in question in that case.

We do note that in the opinion it is said:

> "Congress cannot accommodate its legislation to the conflicting or dissimilar laws of the several States. * * *"

This statement seems sound, and it does seem that the Social Security Act tries to accommodate the Congressional enactment as to what shall be the amount of the Federal tax, to what the several States may enact. In the face of the above quotation from Florida vs. Mellon we do not believe it can be said that that decision will sustain a credit or offset device under all circumstances. We think there is room for fair debate as to whether Florida vs. Mellon could sustain the tax provisions of Title IX, if they were not open to the other objections mentioned.

The exemption features of Title VIII and IX of the Social Security Act suggest the question of whether they violate the Fifth Amendment in regard to classification. If a classification bears no relation to the subject of a tax it would be deemed arbitrary and unreasonable and so violative of the due process clause of the Fifth Amendment. We know of no Federal tax which the Supreme Court has regarded unconstitutional because of improper classification. Still it is not impossible that the court may say that agricultural labor, domestic servants and employees of charitable and similar institutions are as subject to old age and unemployment as those in employments not exempted. If that view were taken the court might regard the exemption of such employments as creating an arbitrary classification. That similar exemptions have been sustained in other measures, particularly in State police regulations, is not conclusive. What may be a proper classification for one purpose may not be for another. All that we care to conclude on this subject, however, is that this subject is also fairly debatable.

Delegation of Legislative Power by Congress

On the question of whether Congress attempted unconstitutional delegation of legislative power by the Social Security Act, Article I, Section 1 of the Constitution is pertinent. It provides:

> "All legislative power herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives."

This clause prevents Congress from delegating its legislative powers. Tests laid down in the decisions by which to determine whether there has been unconstitutional attempt to delegate legislative power were recently reviewed in Panama Ref. Co. vs. Ryan, 79 L. Ed. Adv. Op. 223, and Schechter vs. U. S., 79 L. Ed. Adv. Op. 888.

The main features of the law in this regard may be stated as follows: Legislative powers cannot be delegated. Giving power to make administrative rules and regulations is not delegation of legislative power. Congress may declare its policy and set up certain standards in a general statute and the details within those standards may be left to be filled in by administrative rules and regulations without unconstitutional delegation of legislative power. Legislative power is not delegated by conferring fact-finding power whereby it may be ascertained whether or not certain facts prescribed in the statute as calling for the operation of the statute have actually occurred.

With these general principles in mind, the next matter that will be discussed is the part of Section 302 (a) (3) which allows the Social Security Board to base its determination in certification of payments to the State of the amounts for administration of State unemployment compensations, upon **"such other factors as the Board finds relevant."** This purports to give the Board unlimited power with no standards to guide them. In that view this provision is an unconstitutional attempt at delegation of legislative power.

It is not believed, however, that this provision goes so deeply to the heart of the enactment that the court would be likely to hold any other provision void, because of the invalidity of this provision, if indeed a judiciable question could arise involving it. Section 1103 provides that the invalidity of any provision of the act or the application thereof to any person or circumstance shall not effect the remainder of the act. Such a declaration would be recognized by the court, unless the matter involved were of such vital significance that the court would believe that the remainder of the statute would not have been enacted without the provisions considered invalid.

Section 906 about interstate employments will be discussed in connection with possible State laws.

The only other provisions which seem to deserve attention on the subject of delegation of power are the provisions of Title IX, which allow a credit against the Federal tax with respect to sums paid into State unemployment funds. The question as to whether this is a delegation to the States of the congressional power to fix the amount of a Federal tax, arise from this provision. This provision has already been mentioned on the subject of uniformity. The answer as to whether it makes invalid delegation will depend upon whether the court would say that under the provisions of this statute, Congress attempted to accommodate its legislation to what the State may enact and let the States fix the amount of the Federal tax. We think there is room for debate on this subject.

So-Called Federal Grants-in-Aid

In certain particulars (Titles I, III, IV, V, VI and X) the Federal Social Security Act contemplates the use of the so-called Federal Grants-in-Aid as a means of accomplishing a program which the Federal authorities desire to be enforced with respect to the several matters to which the statute relates. In other words, the Federal statute in substance says that if States will comply with certain mandatory requirements with respect to the several programs to which the Federal statute relates, certain Federal moneys will be granted for use in such programs. So far as these conditions of the so-called grants are concerned, no freedom of action is left to the State. The State must submit to the requirements which the Federal statute prescribes or no money is to be taken from the funds in the possession of the United States to aid in carrying out a plan set up under State law.

The several sections of the Federal statute which set up requirements for Federal approval of any plan to be provided for by the law of a State are now cited by reference to the title number, topic of title and section number of the Federal Social Security Act.

Title I—Grants to State for old age assistance.
What State law must provide to get Federal Grant set out in Section 2 (a).

Title III—Grants to States for unemployment compensation administration.
What State law must provide to get Federal Grant is set out in Section 303 (a).

Title IV—Grants to States for aid to dependent children.
What State law must provide to get Federal Grant for aid to dependent children is set out in Section 402 (a) of the statute.

Title V—Grants to State for maternal and child welfare.
What State law must provide to get Federal Grant is set out in Section 503 (a) in so far as title relates to maternal and child health service and in Section 513 (a) as to services for crippled children.

Title VI—Public Health work.
The essential conditions to Federal Grant under this title are those involved in the purposes of the Act stated in Section 601 of the statute.

Title X—Grants to State for aid to the blind.
What State law must provide to get Federal Grant for aid to the blind is set up in Section 1002 of the statute.

The number and nature of these requirements specified for State laws to get Federal approval, as well as those in Section 903 of the act, furnish additional evidence of the unity of the whole program of the Federal Act and its intent to regulate matters not delegated to the Federal government by the Constitution.

In Massachusetts vs. Mellon and Frothingham vs. Mellon, 262 U. S. 447; 67 L. Ed. 1078, the Supreme Court held that it had no jurisdiction to pass upon the constitutionality of similar provisions at the instance of the suitors there involved. More on this subject will be said under the discussion of the extent to which the courts would pass on constitutionality.

General and Administrative Provisions

Title VII creates a Social Security Board, requires that it shall perform the duties provided for by the statute, provides for its expenses and among other things requires it to make reports.

Title XI is headed "General Provisions." It contains certain definitions and gives rule making power to the Secretary of the Treasury, Secretary of Labor and the Social Security Board for the administration of their functions under the act. It also provides that if one part of the act shall be held invalid the remainder shall not be affected, reserves the power to amend, and says the act may be cited as "Social Security Act."

There are also various provisions through the statute which would govern the Federal officers in their action with respect to approval of State plans, termination of approval, administration, definitions and general pertinent matters.

The only significance of these provisions from a constitutional standpoint lies in the light they throw upon the unity of the Federal program and the extent to which the Federal government is attempting to regulate and control matters not delegated to the Federal government by the Constitution.

No Vested Right

It is noted that the Federal statute provides as a requisite of Federal approval, that a State law of the type referred to in Title IX must not confer any vested right, but must be subject to repeal by the State at any time (Section 903 (a) (6)). There is also another provision which would prevent anyone from getting vested rights under the Federal statute, namely Section 1104, which provides that Congress may alter, amend or repeal any provisions of the Federal Act.

In view of these provisions a supposed beneficiary of the enactments, would have no basis to claim that a change in either the Federal Act or a change in one which the State would enact, violates any vested right of his.

Extent to Which Court Would Pass on Constitutionality of Social Security Act

When the courts will declare statutes unconstitutional is fully discussed in the first chapter of Willoughby on the Constitution of the United States. For present purposes it is enough to say that since the judicial power of the United States extends to cases in law and equity, or admiralty, the court will pass upon the constitutionality of acts of Congress only in cases and controversies, capable of assuming the character of suits at law or in equity or in admiralty. This is sometimes expressed by saying that the court will pass upon the constitutionality only in "justiciable cases and controversies." The court does not nullify laws. It does not make declaratory judgments as to their constitutionality. A person may only question the constitutionality of the law, when he asserts that the enactment interferes with rights, privileges or immunities guaranteed to him by the Constitution. Since Marbury vs. Madison, 1 Cranch 137; 2 L. Ed. 60, the Supreme Court has exercised the right or power to hold a law unconstitutional, where it stands in the way of personal and property rights. Among the many cases discussing that power of the court Muskrat vs. U. S., 219 U. S. 345; 55 L. Ed. 246, may be cited as one of the best expositions of the courts' power in this regard.

Whether any person can present a controversy which would call upon the courts to pass upon the foregoing points of constitutionality depends upon whether he can show that the act interferes with any right, privilege or immunity belonging to him.

It may be said that Massachusetts vs. Mellon and Frothingham vs. Mellon, 262 U. S. 447; 67 L. Ed. 1078 are authority for the proposition that a general taxpayer has no standing in the courts to question or attack the validity or the constitutionality of an appropriation made by Congress. This rule goes so far that even if Congress makes an appropriation by way of gratuity or under what Congress considers a moral obligation arising from a law which may be unconstitutional, the court will not at the instance of a private party declare the appropriation invalid. U. S. vs. Realty Company, 162 U. S. 427; 41 L. Ed. 215.

Massachusetts vs. Mellon and Frothingham vs. Mellon also held that the State was not so injuriously affected simply because Congress had passed a statute without anything having been done under it, that it could bring a suit attacking the statute's constitutionality, and that the State could not do so as parens patria of its citizens. Accordingly if this act merely made Federal grants of Federal funds, an individual could not show sufficient interest to have the court pass upon the constitutional questions. Neither could the State so long as nothing interfering with the State's quasi-sovereign powers were done under it in the State.

It is not to be supposed, however, that if the statute goes beyond mere appropriation and shows that it undertakes to take the property of a person and to divert it to unconstitutional things, that the individual cannot attack it. Neither is it to be supposed that if acts are done under a Federal statute in violation of the Tenth Amendment that the State could do nothing to question the violation of the Tenth Amendment.

As to the individuals it may be said that constitutional guarantees would be reduced to nothing, if a party upon whom an unconstitutional levy is made, could not assert the unconstitutionality. In the case of one upon whom the Social Security Act purports to impose a tax, there is the right to raise the question as to whether the taxes are direct taxes rather than excises, and the question of whether they violate the Fifth Amendment, and as to whether if excises they meet the test of uniformity. Likewise the one taxed may raise the point that the tax provision cannot be separated from the other provisions of the act and that so viewing the matter, the act is unconstitutional for the various reasons above-mentioned.

The other question under this head is: What, if anything, may a State legitimately and properly do in regard to a statute enacted by Congress, if the State deems the enactment to be violative of the Constitution? This question has been the subject of much difference of opinion since the beginning of the United States Government. It called forth the Kentucky and Virginia resolutions. It was involved in the deliberations of the Hartford Convention. It engaged the attention of South Carolina when it adopted the ordinance purporting to nullify tariff acts passed by Congress. It was the subject of many debates in Congress participated in by Webster, Calhoun, Hayne, Benton and their contemporaries. It led up to the attempted secession of the Southern States and the War between the States, commonly called the Civil War. While it may be said without fear of contradiction that no one now extertains the extreme views formerly taken by some defenders of State Rights, that a State has a right to judge for itself of the constitutionality of a Federal enactment, even to the extent of attempting to enforce its views by force and secession, the exact lines of how far a State may go in opposition to statutes enacted by Congress, but deemed by the State violative of the Constitution, has never been precisely determined. One approach to an answer to this problem is found in the following quotation from Massachusetts vs. Mellon.

> "Ordinarily, at least, the only way in which a State may afford protection to its citizens in such cases is through the enforcement of its own criminal statutes, where that is appropriate, or by opening its courts to the injured persons for the maintenance of civil suits or actions. But the citizens of Massachusetts are also citizens of the United States. It cannot be conceded that a State, as parens patriae may institute judicial proceedings to protect citizens of the United States from the operation of the statutes thereof."

That the State may institute legal proceedings to raise the question of whether its quasi sovereign rights have been invaded by actions done or threatened in the State is a conclusion justified by

Missouri vs. Holland, 252 U. S. 416; 64 L. Ed. 641. In that case the State filed a bill in equity to prevent a game warden of the United States from enforcing the Migratory Bird Treaty and regulations thereunder, on the ground that there was an unconstitutional interference with quasi sovereign rights reserved to the States by the Tenth Amendment, and that the acts of the defendants done and threatened under that authority involved the sovereign rights of the States and contravened its will manifested in statutes. It was said that the bill was a reasonable and proper means to assert the alleged quasi sovereign rights of the State. While the treaty was held valid the means used to raise the question was not condemned.

Any room for doubt of the standing of the State to attack in court attempted invasion of its quasi sovereignty in violation of the Tenth Amendment seems to us to be set at rest by the case of Hopkins Fed. S. & L. Asso. vs. Cleary, 80 L. Ed. Adv. Op. 210. In that case, on December 9, 1935, the Supreme Court unanimously decided that a State may do so and that its interest is other than pecuniary is of no moment.

In the light of the last named cases no reason is seen why New Jersey, if it deems any action in the State, taken under a Federal Act, to be an invasion of the Sovereign rights of the State, could not pass a law declaring its will to be that such interference do not take place, and authorizing the filing of a bill to enjoin Federal officials from so interfering with matters reserved to the State. Such a suit would not be one against the United States within the meaning of the ruling that the United States cannot be sued without consent. See Philadelphia Company vs. Stimson, 223 U. S. 605; 56 L. Ed. 570; also Graham vs. Goodsell, 282 U. S. 409; 75 L. Ed. 415. Neither would the State in such a case be complaining on behalf of its citizens. It would be complaining on behalf of its own sovereignty and for its own protection. The complaint would not be that the State is compelled to pass any Federal statute but that Federal officers, under color of office, were intermeddling with State affairs. Florida vs. Mellon and Massachusetts vs. Mellon would not apply.

It is supposed that if the State accepted Grants on conditions which involved activity by Federal officers in the State that it would thereby preclude complaint by the State in that regard.

To sum the matter up, one made subject to the so-called taxes could raise the foregoing constitutional questions and the State could do so to the extent that it alleged violation of the quasi sovereign rights of the State in violation of the Tenth Amendment and the will of the State as declared by statute.

In this connection it should not be overlooked that Title 26, Section 1543, U. S. C. A. provides that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. Notwithstanding this section, however, there are cases in which it has been held that where special and extraordinary circumstances sufficient to bring a case within some head of Equity jurisdiction can be shown, injunction may issue. Among the later decisions to this effect may be mentioned Miller vs. Standard Nut Margarine, 284 U. S. 498; 76 L. Ed. 422. Other cases in point both for and against injunctions under the circumstances presented in them are cited in U. S. Supreme Court Reporter Digest Title "Injunction", Section 92, et seq. and cross-references, and also in the notes of decisions to Section 1543 in the U. S. C. A.

There are some cases which hold that the maintenance by a stockholder of a suit to restrain a corporation from voluntarily complying with taxes alleged to be unconstitutional, is not forbidden by the Federal statute just mentioned, although there are some cases in the lower courts to the contrary to this proposition. Cases on this subject are included in those appearing in the notes of decisions under Title 26, Section 1543 U. S. C. A., particularly note 18.

A suit by a tax payer for an injunction would be subject to the usual rules about security. This might include the requiring a deposit of a sum equal to all or part of the tax attacked.

Department of Justice Memorandum

We are not unfamiliar with the memorandum submitted by the Department of Justice to the Senate Finance Committee while the Social Security Bill was under consideration. It expresses views contrary to those above stated. Most of the grounds of our differences with that memorandum are given above. We only desire to add a few comments in this connection.

One of the most substantial errors made by the Department, as we see it, is that the Department of Justice is unable to see any connection between the tax clauses and the other features of the act.

To the suggestion that Congress may use the taxing power for other purposes than to raise revenue, the answer is that this is so only when the supposed taxes meet the requirements of a valid tax. To the suggestion that ulterior motive and purposes of Congress cannot be considered, the Supreme Court as late as December 9, 1935, in U. S. vs. Constantine, 80 L. Ed. Adv. Op. 195, said:

> "Reference was made in the argument to decisions of this Court holding that where the power to tax is conceded the motive for the exaction may not be questioned. These are without relevance to the present case. The point here is that the exaction is in no proper sense a tax, but a penalty imposed in addition to any the State may decree for the violation of a State law. The cases cited dealt with taxes concededly within the realm of the Federal power of taxation. They are not authority where, as in the present instance, under the guise of a taxing act the purpose is to usurp the police powers of the State."

This rule shows that the Child Labor tax case and Hill vs. Wallace are proper precedents against the constitutionality of the Social Security Act.

In this connection we think it apropos to quote what the Supreme Court said in considering a Massachusetts statute involved in Mac

Allen Co. vs. Mass., 279 U. S. 620; 73 L. Ed. 874. In 73 L. Ed. 879, we find the following:

> "* * * If, by varying the form, that is to say, if, by using one name for a tax instead of another, or imposing a tax in terms upon one subject when another is in reality aimed at, the substance and effect of the imposition may be changed, constitutional limitations upon powers of taxation would come to naught. The rule is otherwise."

and at page 880, these words:

> "* * * These constitute special and compelling reasons why courts, in scrutinizing taxing acts like that here involved, should be acute to distinguish between an exaction which in substance and reality is what it pretends to be, and a scheme to lay a tax upon a nontaxable subject by a deceptive use of words. The fact that a tax ostensibly laid upon a taxable subject is to be measured by the value of a nontaxable subject at once suggests the probability that it was the latter rather than the former that the lawmaker sought to reach. If inquiry discloses persuasive grounds for the conclusion that such is the real purpose and effect of the legislation, the tax cannot be upheld without subverting the well-established rule that 'what cannot be done directly because of constitutional restriction, cannot be accomplished indirectly by legislation which accomplishes the same result * * * Constitutional provisions, whether operating by way of grant or limitation, are to be enforced according to their letter and spirit, and cannot be evaded by any legislation which, though not in terms trespassing on the letter, yet in substance and effect destroy the grant or limitation."

As to the distinction which the Department of Justice draws between the Railroad Retirement Board vs. Alton R. R. Co. and a case which would arise under the Social Security Act, our comment is that for the reasons above given we are unable to see the distinction which the Department professes to see, and as above noted, we see no escape from the conclusion that the principles laid down in the last named case will defeat the taxes upon employers imposed by the Social Security Act. The Hoosac Mills case fortifies our views in this particular.

As to other remarks, such as the quotation to the effect that the only limitation upon the power of Congress to levy excise taxes is geographical uniformity, we observe that this comment skips the consideration of whether the levy is really an excise tax (which it assumes) and leaves out of consideration the fact that if, as we believe, the statute shows on its face that it is for purposes outside the orbit of Congressional action, it obtains no validity because the imposition is labeled excise by the statute. Incidentally Magnano Co. vs. Hamilton Co., 292 U. S. 40; 78 L. Ed. 1109, on which the Department of Justice placed reliance for a part of its argument, shows that the Fifth Amendment will invalidate a statute if it is so arbitrary as to compel a conclusion that it does not involve an exertion of the taxing power, but constitutes in substance and effect, the direct exertion of a different and forbidden power, as for example the confiscation of property. For these reasons and those already given the Department of Justice memorandum does not prevent us from adhering to the views above expressed.

Constitutionality of a State Law Complying With Federal Statute

(Introductory Comment)

One justification urged for the Federal Social Security Act is that it is to form the basis of co-operative action between the Federal Government on the one hand and the individual States on the other. This was the basis of the original Articles of Confederation which failed. When the Constitution of the United States was adopted, a different basis was utilized. The basis was not co-operation within a single field but was a separation of fields in one of which the Federal Government was to be supreme and in the other of which the States were to be supreme. This arrangement has operated for almost one hundred and fifty years. There have been attempted departures from this method of operation. The Eighteenth Amendment (prohibition) attempted by constitutional amendment to provide for co-operation. Section 2 read as follows:

> "The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation."

As a practical matter this worked out that the Federal Government laid down the legislation and the only option of the State was to say yes. This theory of concurrent power is no longer part of the Constitution of the United States. Another attempt at concurrent action or co-operation within a given field was embodied in the National Industrial Recovery Act. This too failed.

> The Federal Social Security Act in essentials and with the exception of the provisions of Title II is a further attempt to base a system upon the idea of co-operation between the Federal and State Governments within a field which belongs distinctly to the States. The fundamental question as to constitutionality of a State law deliberately made to conform to the Federal acts is as to whether a State may, through its legislature or otherwise, surrender its complete and unfettered control over those matters which the citizens of that State have intrusted to the State.

There are few, if any, decisions which may be said to be directly in point. The reason is that with the exception of the Eighteenth Amendment there has never been and is not now a constitutional basis for such attempts. Such attempts not having been made there are few, if any, decisions adjudicating the precise point.

As already noted the Social Security Act contains provisions which mean that the extent to which state co-operation is possible, is compliance with the requirements set out in the Federal statute. As to such matters there is no room for any substantial discretion by the State. It is not believed, however, if New Jersey passes laws which meet provisions made essential to grants or credits by the Federal Act, that the New Jersey law will be held unconstitutional on the ground that the New Jersey Legislature has not exercised any judgment or discretion of its own, but has merely put into the New Jersey law what the Federal statute mentions. So far as being a law of New Jersey is concerned, the provisions, if law at all in New Jersey, would be so because New Jersey enacted them. It would not be open to judicial inquiry as to whether the New Jersey Legislature thought it should pass such provisions, or where the ideas embodied in the New Jersey laws originated.

On the other hand, New Jersey does not get its legislative authority from an Act of Congress, and if any of the terms and conditions set forth in the Federal statute run counter to the New Jersey Constitution, or restrictions on State action contained in the Federal Constitution, the New Jersey Legislature would have no constitutional authority to put them in a law no matter what any Federal statute may purport to provide.

Effect of Commerce Clause of U. S. Constitution

Section 906 of the Social Security Act presents a question concerning the commerce clause of the Federal Constitution. By that clause, Article I, Section 1, Clause 3 of the Federal Constitution, Congress is given power to regulate commerce. By numerous cases collected in the Supreme Court Reporter Digest under the title "Commerce," Section 48, this power of Congress is exclusive.

Stewart vs. Knickerbocker Ice Co., 253 U. S. 149, 164; 64 L. Ed. 841, and the cases it cites, show that where Congress has exclusive legislative power it cannot validly transfer it to the States.

In view of this it would seem that section 906 of the Federal Social Security Act purports to allow the State to go to lengths contrary to the commerce clause. Section 906 says that no person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce. Despite what Section 906 says, it is not seen how Congress can validly make any delegation to the State of the power to regulate interstate commerce. As to one obliged to make payments under a State law because of employments in interstate commerce, it is believed that a State law of the character referred to in Section 906 of the Social Security Act would be deemed an unconstitutional regulation of interstate commerce. (See Cooney vs. Mountain States Telegraph & Telephone Co., 79 L. Ed. Adv. Op. 498.)

Legislative Power of State

The provision in the New Jersey Constitution as to the legislative power of the State is:

> "The legislative power shall be vested in a Senate and General Assembly." Article IV, Section 1, Clause 1.

The legislative powers of any State are restricted by the Fourteenth Amendment of the United States Constitution which, among other things, forbids any State from taking property without due process of law.

Further, on the subject of the legislative power of the State, the law is, that the State legislature cannot validly delegate its legislative power, except in certain municipal matters not here involved.

Dexheimer vs. Orange, 60 N. J. L. 111

In general the same principles which measure whether a Federal statute makes illegal delegation of Congressional power would apply in the determination of whether a New Jersey law does so with respect to State legislative power.

The inquiry then arises as to whether a New Jersey statute could contain the requirements mentioned in certain sections of the Federal statute, without making unconstitutional delegation of the State's legislative power.

Provisions of the Federal Act pertinent to this inquiry are:

Section 2, subdivisions 5 and 6; section 303, subdivisions 1 and 6; section 402, subdivisions 5 and 6; section 503, subdivisions 3 and 4; section 573, subdivisions 3 and 4; section 903, subdivision 1, and section 1002, subdivisions 5 and 6.

Without repeating the exact phraseology of these several subsections, it may be noted that to meet their requirements a State law would have to leave to Federal agencies the final determination as to various matters. In effect New Jersey officers authorized to administer any plans set up by a New Jersey statute, to some extent, would be obliged to look to Federal officials for the definition of their duties.

The Supreme Court has held that the Federal Government may in some cases make use of State agencies for carrying out Federal laws.

Arver vs. U. S. 245 U. S. 366; 62 L. Ed. 349,

See also, Willoughby on the Constitution of the United States, sections 71 and 72,

and cases in United States Supreme Court Reporter Digest under the topics "States", section 26, and "Constitutional Law," section 57.

But we have found no decision stating how far, if at all, the State may use Federal agencies to carry out State laws.

The New Jersey Constitution precludes a person who holds an office of profit under the United States from at the same time acting as a member of the legislature. Article IV, section 5, clause 3, or from acting as governor. Article V, section 8, but there is no general provision in the New Jersey Constitution forbidding State officials from being Federal officials at the same time. The question seen in this connection is one which would probably not become judiciable. It is whether the Federal officials would regard themselves as officers of New Jersey, or be under any obligation to look to anything said or done by New Jersey as a source of authority or guidance for their actions. It is not seen how New Jersey could have any control over their actions. Looked at in this light it would seem that anything in a New Jersey statute delegating State authority to Federal officials who would not be New Jersey officers, would be an attempted abdication by the State Government in respect of matters committed to it by the People by the New Jersey Constitution.

Many agree with the view expressed by President Grant in an Executive Order that the holding of both Federal and State offices by the same person, and at the same time, is incompatible with the due and faithful discharge of the duties of either office and not in harmony with the genius of our government (an indestructible union of indestructible States). It could hardly be said to be less objectable to have Federal officials exercising State functions without any State power of supervision or control over them and without even the moral protection of an oath of office. It is not supposed that any of the Federal officials mentioned in the Federal statute would take any oath to carry out the provisions of the New Jersey Constitution and law. This, however, seems a matter which the New Jersey Legislature and the Governor must consider from the standpoint of their obligation to support the New Jersey Constitution. It is not seen how successful court attack could be based on this ground against anything they may do in that regard.

Other Clauses of New Jersey Constitution

Other provisions of the New Jersey Constitution as amended, which have been considered on the subject of the power of the New Jersey Legislature to provide plans such as the Federal statute contemplates are the following:

Article I

> 1. Natural rights. All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.
>
> 16. Compensation for taking of private property for public use. Private property shall not be taken for public use without just compensation:

Article IV, Section 6

2. Drawing money from treasury. No money shall be drawn from the treasury but for appropriations made by law.

3. Loan of credit of State. The credit of the State shall not be directly or indirectly loaned in any case.

4. Limitation as to amount of debts created and provision for payment thereof; laws creating debts to be ratified by people; exception: The legislature shall not, in any manner create any debt or debts, liability or liabilities, of the State, which shall singly or in the aggregate with any previous debts or liabilities at any time exceed one hundred thousand dollars, except for purposes of war, or to repel invasion, or to suppress insurrection, unless the same shall be authorized by a law for some single object or work, to be distinctly specified therein; which law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years from the time of the contracting thereof, and shall be irrepealable until such debt or liability, and the interest thereon, are fully paid and discharged; and no such law shall take effect until it shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it at such election; and all money to be raised by the authority of such law shall be applied only to the specific object stated therein, and to the payment of the debt thereby created. This section shall not be construed to refer to any money that has been, or may be, deposited with this State by the Government of the United States.

Article IV, Section 7

4. Laws to embrace but one object to be expressed in title; amendments; how made; contents of general laws; acts not to be made part of other acts except by incorporation in full therein. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length. No general law shall embrace any provision of a private, special or local character. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act, or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act.

12. Laws relating to taxation. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value.

Article I, clause 1, describes as among the natural and unalienable rights of all men the acquiring, possession and protecting of property. The questions which would arise under this clause and any statute passed by New Jersey to comply with the Federal requirements would be substantially the same as those which would arise under the Fourteenth Amendment forbidding the State from taking property without due process of law. These considerations are so similar to those arising in consideration of the Fifth Amendment as related to the power of Congress to take property and devote it to the purposes of the Federal Social Security Act, that no lengthy discussion of this subject is deemed necessary. If the views above expressed with respect to the effect of the Fifth Amendment on the Federal statute are sound, Article I, clause 1, would stand in the way of a State statute along the same lines as the Federal statute. The case of Citizens Saving and Loan Association vs. Topeka, 20 Wallace 655; 22 L. Ed. 455 (above mentioned), involved a State law and established the doctrine that a State cannot use its revenue powers to take the property of one group of private citizens and bestow it on another group, thus applying under State Constitutions the very same principle and conclusion as the Supreme Court did to the Railroad Retirement Act in the case affecting that Act. In reaching this conclusion the Supreme Court said that such a use of the revenue funds was opposed to the principles of both the State and the National Constitutions; and in the prior case of Olcott vs. Supervisors, 16 Wall, 678; 21 L. Ed. 382, it had held that whether or not such a use was being made by a State of its revenue powers was a matter of general law for the Supreme Court to ascertain for itself, unbound by State decisions which might be persuasive but not controlling.

With respect to the clause about compensation for taking private property for public use, the questions are also similar to those which the Federal Act presents under the Federal Constitution. If the enactments by New Jersey were deemed to be taxes and as such for public use, the sixteenth section of Article I would not stand in their way. If, on the other hand, they were not valid taxes this clause would stand in their way.

Without discussing in detail the provisions of Section 6, Article IV, it may be said that the conclusion is reached that they would not stand in the way of compliance by New Jersey with the Federal program, although there may be room for argument to the contrary.

With regard to Article IV, Section 7, it may be said that clause 4 with regard to the title and contents of general laws, presents no insuperable obstacle to compliance by New Jersey with the program of the Federal Social Security Act, but that in drafting any State statute the provisions of this clause must be observed.

As to the 12th clause of Article IV, Section 7, the question is somewhat similar to some of those raised under the Federal statute. If a State tax were deemed a license or excise tax this clause would not apply. But if it were a tax on property, an exemption based upon the personal status of its owner is unconstitutional under this clause. Tippett vs. McGrath, Collector, 70 N. J. L. 110. There is room for argument that a statute exempting employers of farm labor and domestic servants would be repugnant to this clause. The uniformity required by this section is not like that under the Federal Constitution, a geographical uniformity.

No other clause of the New Jersey Constitution is believed to have sufficient pertinence to deserve mention. In the absence of any specific proposed State statute, it would seem unduly speculative to attempt to canvass the State Constitution in further detail.

On the whole, the question of whether there would be a violation of the New Jersey Constitution by State compliance with the program contemplated by the Federal Act is of an importance subordinate to the question of whether the Federal statute is constitutional. If the Federal statute is open to the constitutional objections above mentioned, nothing New Jersey might do could give validity to the Federal statute.

Summary of Principal Conclusions

In view of the length of this opinion of some of the principal conclusions are stated in condensed form.

1. The Social Security Act, as a whole, sets up a unified program of national scope. The principal reasons for this conclusion are: the President so recommended it, it was passed practically as recommended and its history shows its unity, the same persons who get old age benefits under Title II are the ones in respect of whom the tax on employers under Title VIII is imposed, the credit on the tax on employers made by Title IX is for sums paid into State unemployment funds, all moneys collected by State funds are to be turned over to a Federal fund, the General Provisions title applies to all titles of the act, except for the provisions relating to taxes, there is no suggestion how all of the other provisions are to be financed, the President's statement indicates that the payment of insurance benefits should be self-sustaining and the title of the act seems to indicate unity in the program, and the requirements for Federal approval of State laws bespeak regulatory intent over local matters.

2. Since the taxes upon employers are part of a unified program, including regulation of matters not in the orbit of congressional power and reveal a purpose to coerce the States into acquiescence, rather than mere revenue raising, and make levies for other than governmental purposes of the United States, the so-called excises on employers are not taxes at all.

3. Since the so-called excises on employers take private property for private use contrary to principles recognized in Railroad Retirement Board vs. Alton, the so-called excises on employers violate the Fifth Amendment regarding due process.

4. In connection with the foregoing conclusions, even if the entire Act were not inseparably united, and there is unity between the taxes and provisions which would put the money to be derived therefrom to non-governmental uses and for private use and for coercion

of State action and regulation of local matters, they would be subject to the above objections.

5. Regardless of whether the act is a unified program, the so-called excises upon employers are of questionable constitutionality on the grounds that: 1. They are direct taxes not apportioned, rather than excises, 2. Since the Federal Act seems to accommodate the amount of Federal tax to what the States may levy, there may be lack of uniformity and there may be delegation of power to the States to fix the amount of Federal tax.

6. It seems that there is unconstitutional delegation of power by the section giving the Board power to use "such other factors as the Board may find relevant" in determining what amount the State will get (Section 302 (a)). This item would not invalidate the whole Act.

7. Federal Grants-in-Aid are only open to attack on constitutional grounds at the instance of one who can show that his money is taken by a tax to provide part of the funds granted.

8. If the State accepted socalled Grants-in-Aid under Titles I, IV, V, VI, and X, it would probably not be possible for an individual to obtain an adjudication that the Grant or its acceptance is unconstitutional but he might litigate the question of whether he had been unconstitutionally taxed to obtain funds to meet the Grants.

9. In respect of taxes, if action were taken by the State meeting the Federal requirements, there would be a question whether the State law violated the due process provisions of the Fourteenth Amendment. This would be similar to the question that arises under the Federal statute with respect to the Fifth Amendment, and would raise the questions whether the purposes of the levy would be governmental, whether private property was taken for private use and whether there was proper relation between the right taxed and the basis of the levy.

10. A State law taxing an interstate commerce employment would be unconstitutional notwithstanding what Section 906 of the Social Security Act says.

11. If the State enacted a law meeting the Federal requirements, there would be a question as to whether there was unconstitutional delegation of the State legislative power and as to whether the question would be justiciable.

12. Other questions with regard to possible State legislation are not summarized because of the brevity with which they have been discussed.

13. A State cannot complain of interference with its citizens' rights by Federal law, and cannot complain of unconstitutional Grants by act of Congress. If action is taken in a State which amounts to unconstitutional invasion of State's quasi-sovereignty by persons claiming to be acting under authority of the Federal law, the State could, by legislative act, declare its will that there be no such invasion and then file bill for injunction. If the Federal officers' actions in the State were held to be constitutional, the injunction would be denied. On the other hand, if the Federal statute, under

color of which the persons claimed authority, were held unconstitutional such persons would be enjoined from invading the field of State action in violation of the Tenth Amendment. A suit to restrain a person from acts under color of an unconstitutional Federal statute is not a suit against the United States. Private parties can only attack an unconstitutional law when it interferes with some right, privilege or immunity guaranteed by the Constitution. So a private party cannot attack Federal Grants unless he can show that his money is taken to accomplish the illegal purpose. The same foundation is necessary for a private party to raise the point that there is unconstitutional delegation of power, and invasion of State fields in violation of the Tenth Amendment or that by an illegal tax his property is taken contrary to the Fifth Amendment.

14. Injunctions to restrain assessment and collection of Federal tax are only issued if special equitable basis is shown. Otherwise the tax must be paid and suit for refund instituted after proper preliminary proceedings.

15. A private person can attack the constitutionality of a State law if it violates some right, privilege or immunity guaranteed to him by the Constitution of the United States or the State Constitution.

Our opinion is that the Federal Social Security Act will be held to violate the Constitution of the United States and that a law of the State of New Jersey, conforming to the unemployment benefits provisions of the Federal Act, would violate the Fourteenth Amendment to the Constitution of the United States and the Constitution of the State of New Jersey.

Respectfully submitted,

JOHN C. BARBOUR,
ROBERT C. HENDRICKSON,
FREDERICK S. KELLOGG,
HENRY YOUNG, JR.

Dated: January 18, 1936.

Appendix D

(P. L. 1935, Joint Resolution No. 7, as amended by Joint Resolution No. 15)

A joint resolution for the creation of a commission to study the problems of unemployment insurance, the liberalization of old-age relief, compulsory retirement annuity legislation, aid to dependent or crippled children, maternal and child welfare, public health, and the aid to the blind in co-operation with the Federal government.

Whereas, Economic insecurity due to unemployment is a serious menace to the health, welfare and morale of the people of this State, unemployment is, therefore, a subject of general interest and concern to all its people, and requires appropriate action by the Legislature to prevent its spread, and to lighten the burden which now so often falls with crushing force upon the unemployed worker and his family; and

Whereas, The President of the United States has called upon the Congress to enact legislation taxing payrolls and salaries for the purpose of creating unemployment reserves; and

Whereas, Employers are to be given credit up to ninety per centum (90%) of the Federal payroll tax when they participate in an approved State system of unemployment insurance; and

Whereas, The President of the United States has asked the Congress to contribute on a fifty per centum (50%) participating basis to the States complying with the proposed Federal regulations in the payment of old-age relief; and

Whereas, It is desirable that New Jersey's statutes be reviewed in relation to such Federal legislation as may be adopted; and

Whereas, In his inaugural message, Governor Harold G. Hoffman expressed the recommendation that a special commission be empowered to investigate those subjects; therefore,

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. There is hereby created a commission of thirteen members, to be appointed as follows: Three members of the Senate to be appointed by the President thereof; three members of the Assembly to be appointed by the Speaker thereof, and seven members to be appointed by the Governor. All members shall serve without compensation.

2. Such commission shall organize as soon as may be after the members' appointment, upon the call of the Governor, and shall elect a chairman, a vice-chairman and a secretary from its members.

3. The commission shall be charged with the duty of inquiring into the subjects of unemployment insurance, old-age relief, compulsory retirement annuity legislation, aid to dependent or crippled children, maternal and child welfare, public health, and aid to the blind and of determining in what respects the State of New Jersey may most effectively co-operate with such Federal legislation as may be enacted.

4. It shall familiarize itself with the functioning of chapter two hundred and nineteen, public law of one thousand nine hundred and thirty-one, the old-age relief statute and amendments thereto, and to determine what changes if any may be advantageous.

5. The said commission is authorized to hold hearings, call witnesses, and to draft necessary legal, clerical and other assistance from the office of the Attorney General of the State of New Jersey, and other State departments, as may be required.

6. The commission is directed and authorized to report to any regular or special session of the Legislatures of one thousand nine hundred and thirty-five or one thousand nine hundred and thirty-six, and to cause to be introduced such bill or bills as in its judgment may be required for the proper carrying out of its objects.

7. This resolution shall take effect immediately.

Approved June 27, 1935.

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STATE OF NEW JERSEY

SOCIAL SECURITY COMMISSION

Report on Unemployment Compensation

TO

The Honorable HAROLD G. HOFFMAN, Governor

AND

THE GENERAL ASSEMBLY AND SENATE

REPORT No. 2

Commission Publication No. 4

December, 1936

State of New Jersey
Social Security Commission

Report on Unemployment Compensation

DECEMBER, 1936

MEMBERS OF THE COMMISSION

Harry L. Derby, Montclair, *Chairman*
Mrs. Elizabeth Harris, Glen Ridge, *Vice-Chairman*
William J. Ellis, Trenton, *Secretary*
Senator John C. Barbour, Clifton
Assemblyman John V. Burke, Perth Amboy **
Senator Blase Cole, M.D., Newton *
Senator Theodore B. Dawes, Blairstown
Senator Frank Durand, Sea Girt
Dr. Robert P. Fischelis, Trenton
Senator Robert C. Hendrickson, Woodbury
Frederick S. Kellogg, Montclair
Senator S. Rusling Leap, Woodstown *
Assemblyman Dayton D. McKean, Princeton *
Vincent P. Murphy, Newark
Assemblyman Marcus W. Newcomb, M.D., Browns Mills
John J. Toohey, Jersey City
Assemblyman Henry Young, Jr., Newark

---

* Resigned
** Deceased

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no.2

LETTER OF TRANSMITTAL

To the Honorable Harold G. Hoffman, Governor of New Jersey, and to the Senate and General Assembly of the State of New Jersey:

This Commission transmits herewith its Second and Final Report of its investigation and recommendations.

The Report is divided into ten Parts.

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X. Draft of Bill to provide Employer Reserve (Modified Wisconsin Plan) ... 96

I have the honor to remain,

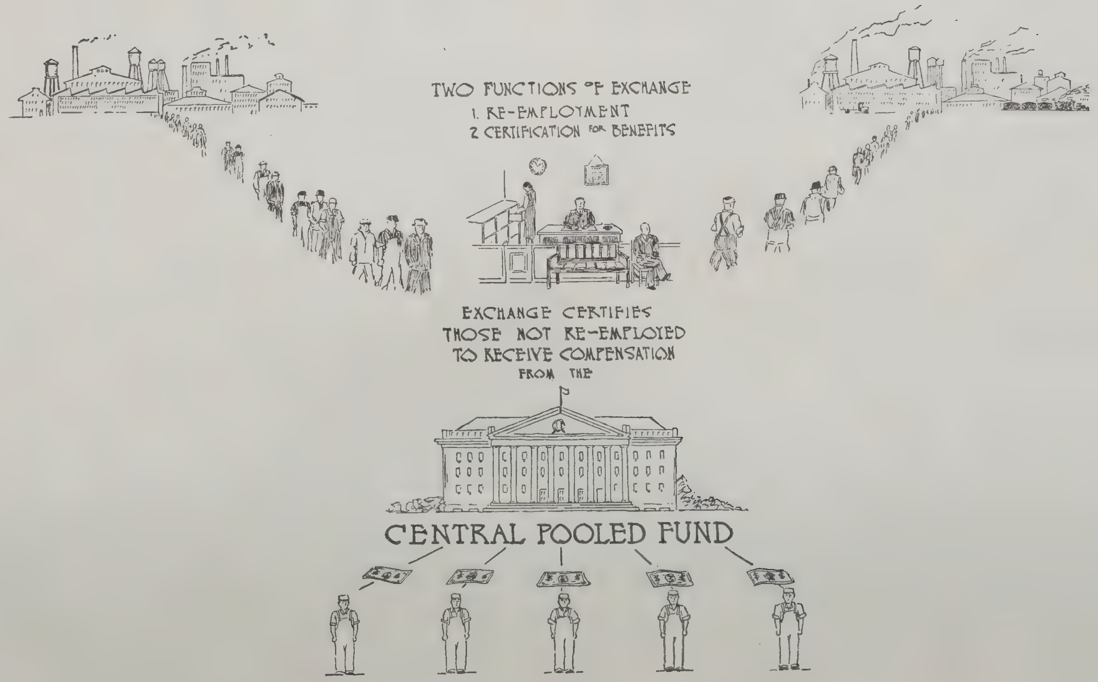
Very respectfully yours,

H. L. DERBY, *Chairman.*

THE EMPLOYMENT EXCHANGE

AND ITS OPERATION

PLAN D


TWO FUNCTIONS OF EXCHANGE
1. RE-EMPLOYMENT
2 CERTIFICATION FOR BENEFITS
EXCHANGE CERTIFIES
THOSE NOT RE-EMPLOYED
TO RECEIVE COMPENSATION
FROM THE
CENTRAL POOLED FUND

PART I

GENERAL STATEMENT BY THE COMMISSION

The New Jersey Social Security Commission made its Report No. 1 to the Legislature on January 20, 1936. Thereafter Hon. Dayton D. McKean resigned as a member of this Commission and Hon. John V. Burke was appointed in his stead. Mr. Burke, during his term of service, was of distinct assistance to the Commission and his untimely death was a cause of sorrow to all. Hon. Blase Cole, having been appointed to a judicial position, has resigned.

The Commission is at present comprised of the following:

Harry L. Derby, Chairman	Montclair
Mrs. Elizabeth Harris, Vice-Chairman,	Glen Ridge
William J. Ellis, Secretary	Trenton
Judge John C. Barbour	Clifton
Senator Robert C. Hendrickson	Woodbury
Senator Frank Durand	Sea Girt
Senator Theodore B. Dawes	Blairstown
Assemblyman Marcus W. Newcomb, M.D.,	Browns Mills
Assemblyman Henry Young, Jr.	Newark
Dr. Robert P. Fischelis	Trenton
Frederick Snow Kellogg	Montclair
Vincent J. Murphy	Newark
John J. Toohey	Jersey City

In Report No. 1 the Commission recommended action in conformity with the Federal Social Security Act with respect to:

Old Age Assistance
Aid to Dependent and Crippled Children
Public Health, Maternal and Child Health, and
  Vocational Rehabilitation
Aid to the Blind

The Legislature enacted laws accordingly and they were signed by the Honorable Harold G. Hoffman, Governor.

As a result the resources available for the above services, all of which have been supported by State and county funds for many years, have been largely increased through the grants-in-aid made available by the Federal Social Security Board.

In the course of its deliberations the Commission has held twenty-seven meetings of the membership and many subcommittee meetings, and has conducted four public hearings. Each of these attracted widespread attention among labor, industrial, commercial, professional, civic, and welfare organizations, as well as many other interested citizens.

The Press has given wide publicity to the activities of the Commission, particularly with respect to the problem of unemployment compensation, and by appearance of the New Jersey Newspaper Publishers' Association.

The work of the Commission has been carried on by means of individual study, through research staff activities, and also through consideration of counsel and advice obtained by means of intensive correspondence, personal conferences, as well as by public hearings.

The Commission is deeply appreciative of the assistance given by Governor Hoffman and of his willingness to confer with any members of the Commission who sought his advice.

The administrative departments of the State concerned in the matters disposed of by our former report, namely, the Department of Institutions and Agencies, the State Department of Health, and the Crippled Children's Commission, are to be complimented upon the promptness with which they applied for the necessary Federal approvals and received the grants-in-aid provided under the Federal Social Security Act. We are glad to acknowledge the cooperation of the Joint Appropriation Committee of the Legislature and the State House Commission in making funds available promptly for purposes of qualifying for Federal aid on a matching basis. We wish also to express our appreciation of the prompt and effective way in which the Federal Social Security Board accepted the New Jersey plans for co-operation and issued the required approvals.

In view of present divergence of opinion among the Commission as to further legislative action, the Commission begs leave to recall to the attention of the Legislature that its report as to the matters above mentioned was a unanimous report.

The only remaining provisions of the Federal act on which the Commission was requested to investigate and report are:

(a) Federal old age benefits; tax collected from payroll fund of 1937 and subsequent years, benefits first payable in 1942 (Titles II and VIII).

(b) Federal-State unemployment compensation; tax collected in 1937 on basis of 1936 payrolls and similarly for subsequent years; benefits first payable in 1938, or later, dependent upon State action (Titles III and IX).

The provisions of the Federal act in respect of old age benefits for inhabitants of New Jersey engaged in occupations local to this State require no State action, but are to be administered exclusively by Federal officials. The provisions in respect of unemployment compensation require State action and prescribe in certain particulars the nature of that State action. If the action of the State does not conform to these unemployment requirements then moneys which, under the Federal plan, are to be raised by taxation based upon the private payrolls of this State are not required to be returned to this State or its inhabitants.

Several members of the Commission believe that these old age and unemployment provisions of the Federal act are invalid for constitutional reasons; other members of the Commission are in doubt; still others believe that the question of constitutionality of the Federal act should, for the present at least, be avoided or disregarded.

In view of this divergence of opinion the majority of the Commission has determined to recommend the enactment of an unemployment compensation law which conforms to the Federal act. Others of the Commission have been unable to agree to this conforming act. The statements of those favoring the proposed conforming bill are contained in Part 1 of this Report, and the statements of those unable to agree with the proposed conforming bill and offering alternative proposals are contained in Part 2.

Respectfully submitted,

Harry L. Derby, *Chairman*
Mrs. Elizabeth Harris, *Vice Chairman*
William J. Ellis, *Secretary*

Senators

John C. Barbour, *Passaic*
Theodore Dawes, *Warren*
Frank Durand, *Monmouth*
Robert C. Hendrickson, *Gloucester*

Assemblymen

Dr. Marcus W. Newcomb, *Burlington*
Henry Young, Jr., *Essex*

Dr. Robert P. Fischelis
Frederick S. Kellogg
Vincent J. Murphy
John J. Toohey

STATE OF NEW JERSEY
SOCIAL SECURITY COMMISSION

Report by the Majority of the Commission Recommending An Unemployment Compensation Plan

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PART II

STATEMENT BY THE MAJORITY OF THE COMMISSION

"Plan D" for unemployment compensation which is outlined in detail in the pages immediately following has the unqualified support of ten of the thirteen members of the Commission. It provides for:

(a) Contributions both by employers and employees to be held in a single State-wide pool.

(b) Employer contributions are subject to merit (experience) rating.

(c) Employee contributions make it possible for "Plan D" to withstand safely a major period of cyclical unemployment and will pay benefits to all employees covered without default.

(d) "Plan D" provides for simplified administrative procedures. This will greatly reduce the amount of clerical work both for the employer and for the unemployment compensation commission which is to be established under it.

In comparing the majority "Plan D" with the minority "Wisconsin Plan" the Legislature and the citizens of New Jersey should realize that benefits provided under "Plan D" are much more substantial and stable than is possible under the minority plan.

The "Wisconsin Plan" does not provide the spreading of risks possible under a pooled fund system.

The advantages in the way of reduced costs to the employer are liberal and certain under "Plan D".

The minority plan offers only an average of 8¾ weeks of benefits, contrasted with 16 weeks under "Plan D".

"Plan D" is based on the principle upheld by the Supreme Court in the New York Unemployment Compensation case.

It is, moreover, the principle which has been adopted by twenty-two of the twenty-three States which have enacted Unemployment Compensation laws.

Members of the Commission who have appended their names to the majority report are:

Senators

Frank Durand, *Monmouth*
President of Senate
Theodore Dawes, *Warren*
Robert C. Hendrickson, *Gloucester*

Assemblymen

Dr. Marcus W. Newcomb, *Burlington*
Speaker of the House
Henry Young, Jr., *Essex*

Mrs. Elizabeth Harris, *Vice Chairman, Social Security Commission*

Dr. Robert P. Fischelis, *Conference of Allied Medical Professions*

William J. Ellis, *Secretary, Social Security Commission*
Commissioner of Institutions and Agencies

John J. Toohey, *Commissioner of Labor*
Vincent J. Murphy, *Secretary-Treasurer, New Jersey State Federation of Labor*

PART III

MAJORITY REPORT RECOMMENDING "PLAN D"

The New Jersey Social Security Commission was organized on August 13, 1935, and proceeded under the provisions of Senate Joint Resolution No. 7 creating it, to consideration of the several problems involving State legislation proposed by adoption of the Federal Social Security Act.

Since the grants-in-aid sections of the Federal Act were the first to become effective, the Commission gave its first attention to the problems of:

Old Age Assistance
Aid to Dependent Children
Aid to the Needy Blind
Aid to Crippled Children
Child Welfare Services
Public Health Services
Maternal and Child Health
Rehabilitation of the Victims of
  Industrial Accidents

All of these forms of public welfare and public health activity were then being carried on by New Jersey as the result of deliberate adoption of advanced forms of statutes over a period of some forty years. The specific duty of the Commission in this connection was to inquire into the necessity and advisability of changing the methods of administration and the scope of application of these laws in such manner as to conform with the requirements for receiving substantial Federal participation on a ''grants-in-aid'' basis.

The results of the Commission's deliberations were set forth at length in the Commission's Report No. 1, dated January, 1936, and following the publication of which the Legislature adopted by unanimous vote in each House the specific statutes which were prepared under the direction of this Commission. New Jersey citizens are now enjoying the benefits of the most liberal public assistance and health laws ever enacted in this State.

There remained one problem of vital importance which was still to be solved. This problem was concerned with the advisability of establishing a system of unemployment compensation which might or might not comply with the standards fixed in Titles 3 and 9 of the Federal Act.

Commission Resolved to Recommend An Unemployment Compensation Plan

Very early in its deliberations the Commission reached a conclusion that it was advisable to adopt a system of unemployment compensation in New Jersey. This conclusion was based largely on the fact that unemployment compensation is a partial substitute for relief to the extent that the payment of unemployment compensation will defer the time when the persons receiving such benefits will have to be assisted by public relief agencies.

Unemployment Compensation Spreads the Risk of Losses

Any system of unemployment compensation is a device for applying the principle of insurance to the payment of benefits to persons who, after a period of employment, are subjected to discharge or lay-off because the employer is unable to use their services for the time being. All insurance involves the idea of spreading the losses involved by death, fire, theft, tornado, etc., over a large group of contributors each of whom participates in rights to reimbursement in the event he falls victim to the type of loss specified in the contract.

Unemployment compensation is a form of insurance and its purpose is to build up a fund by means of contributions from employers or employees or both, out of which employees deprived of their jobs may, after a limited period of waiting, be paid benefits for a specified number of weeks.

Majority Recommend Plan D

The unemployment compensation plan proposed by the majority of the members of this Commission, and known at the time of a public hearing held in the Assembly Chamber on December 2, 1936, as "Plan D", meets such a definition. It requires both employers and employees to contribute to a State unemployment compensation fund out of which benefits will be payable to eligible unemployed workers as a matter of legal right.

Plan D Is Financially Sound

This specific Plan D has been tested as to its soundness in the following manner: It has been assumed that the plan was enacted into law in the year 1922 and that it had applied to the types of employment which it covers in the State of New Jersey from that date to the present time.

On the basis of statistics of wages paid and employment in New Jersey and the amount of unemployment existing from time to time, it has been found by means of actuarial computations that Plan D would have been able to pay all of the benefits set forth in the contract to workers covered and *would have remained solvent* throughout a period which has included the most disastrous cycle of unemployment in the world's history.

The period of greatest strain would have occurred in the years 1931-33 when the reserves accumulated during the preceding ten years would have been subjected to tremendous strain. Nevertheless, there would have been a substantial balance remaining and at the present time the reserves would again be accumulating.

Computations show that the total reserve would have approached some $115,000,000 at its peak and would have declined to less than $65,000,000 when drained to the lowest point of the cycle, but would have recovered to substantially more than $83,000,000 of assets by the present time. In the period of the depression, 1930-36, total distributions from the fund would have exceeded $280,000,000.

If our foresight had been sufficient to establish such a plan fifteen years ago the story of the recent depression might have been far different. No one can estimate the tremendous value of such a measure except in terms of the avoidance of human suffering. What a contrast as a constructive measure of social security it affords to the dole!

Federal Aid Designed to Encourage State Action

Contrary to the impression generally held the Federal Social Security Act did not create unemployment compensation. It did, however, have as one of its principal objects the removal of the element of competition as between the States which had delayed for many years the adoption of a long recognized principle of public protection. It created a frame within which individual States might act without penalizing their employers.

Unemployment compensation is not new. It has long been in use with general satisfaction to both employers and employees and the general public in almost all other industrial nations. Constitutional limitations in the United States, however, have prevented the adoption of a national unemployment compensation act. Because of the keen desire of the respective States to avoid imposing competitive disadvantages upon their industries, States have generally refrained from enacting compulsory unemployment compensation plans. The single exception prior to the adoption of the Federal Social Security Act was the adoption, in 1931, of the Wisconsin Employment Stabilization Act, which provided for an employer reserve type of compulsory unemployment compensation plan.

In framing the Federal Social Security Act the Congress had as one of its primary objectives the elimination of the competitive obstacle to State unemployment compensation legislation. To achieve this Title 9 of the Federal Act provides that all employers, with exceptions of certain categories, shall be subject from January 1, 1936, to a tax on payrolls for unemployment compensation. Against this tax the individual employer who contributes up to 90% of the value of the payroll tax into an approved State unemployment compensation fund may take credit for such contributions against the Federal levy. In Title 3 of the Federal Social Security Act it was further provided that the Federal government would assist the States by making grants for the cost of operating unemployment compensation systems in every State which established a system which could be approved under the liberal provisions set up.

Plan D Will Guarantee Recapture for New Jersey of Federal Tax

Plan D, among other objectives, has as one of its major purposes the so-called recapture of the 90% credit allowable to individual employers against their accrued Federal payroll taxes for unemployment compensation. This will amount to $10,000,000 to $12,000,000 during the first year. In the third year and thereafter it may reach $36,000,000 to $40,000,000 a year.

There are many persons who have raised doubts concerning the constitutionality of Titles 3 and 9 of the Federal Act. Briefs on this question which have been submitted to the New Jersey Social Security Commission have been published in earlier reports.

The situation existing at the time the Report No. 1 of this Commission was published, January, 1936, has been vitally modified, however, in recent weeks.

United States Supreme Court Upholds State Unemployment Act and Pooling

On November 23, 1936, the United States Supreme Court passed upon the first State unemployment compensation plan to come before it, when by a *per curiam* decision read by Chief Justice Hughes, the court, on an equal division, *affirmed the judgments* reached by the Supreme Court of the State of New York in Chamberlain v. Andrews, Stearns v. Andrews, and Associated Industries v. Department of Labor.

This initial decision strongly indicates that future questions referring to the power of an individual State to provide for compulsory unemployment compensation insurance based on pooled funds will be upheld. It is, therefore, reasonable for other States to go ahead along the lines established by New York State. This is particularly true since Justice Stone, the absent member of the court on the day of the decision, it is believed, would uphold the positions assumed by Chief Justice Hughes and his associates.

The following language from the decision of the New York Supreme Court which was thus endorsed by the Supreme Court of the United States is indicative of the great social significance of this step:

> "The courts can take judicial notice of the fact that unemployment for the last five or six years has been a very acute problem for State and Federal government. There have always been from earliest times the poor and unfortunate, whom the State has had to support by means of money raised by taxation. We have had our homes for the poor and the infirm, hospitals, infirmaries and many and various means for taking care of those who could not take care of themselves. The institutions housing our insane have grown to be an enormous expense, illustrating that the legality of the expenditure of public moneys for vast numbers of those who were without means of support or help has never been questioned.
>
> "Another problem has faced society which has been a source of study, discussion, agitation and planning. Unemployment, from whatever cause, has increased enormously in every part of the country, if not throughout the world. Is there any means possible to provide against unemployment, the loss of work, with its serious consequences to the family, to the children and to the public at large? When such a matter becomes general and affects the whole body politic, a situation has arisen which requires the exercise of the reserve power of the State, if there by a practical solution. Some have suggested that for the periodical recurrence of panics and hard times, the actuary might be able to work out a scheme of insurance. We need not pause to determine whether this can be done or not. The fact is that in the past few years enormous sums of State and Federal money have been spent to keep housed and alive the families of those out of work who could not get employment. Such help was absolutely necessary, and

it would be a strange kind of government, in fact no government at all, which could not give help in such trouble.

"The Legislature of the State, acting after investigation and study and upon the report of experts, has proposed what seems to it a better plan. Instead of solely taxing all the people directly it has passed a law whereby employers are taxed for the help of the unemployed, the sums thus paid being cast upon the public generally through the natural increase in the prices of commodities. Whether relief be under this new law of the Legislature or under the dole system the public at large pays the bill.

"We may concede that much of unemployment is due to other factors than business depression. Just what does cause slumps in business, panics and unemployment has never been satisfactorily explained, but a very large percentage of those who are out of work have lost their jobs or positions by reason of poor business conditions and hard times. I can see, therefore, nothing unreasonable or unconstitutional in the legislative act which seeks to meet the evils and dangers of unemployment in the future by raising a fund through taxation of employers generally."

MAJORITY AND MINORITY PLANS

Divided opinion within the New Jersey Social Security Commission with reference to the underlying philosophy upon which unemployment compensation is based resulted in intensive study and consideration of two alternatives. That plan receiving the support of a majority of the members is based upon the theory upon which the New York unemployment compensation statute was founded, namely, that the State should adopt a compulsory pooled fund unemployment compensation plan covering employees of those categories included within the Federal Act. The Majority Plan not only embraces a pooling of funds, but has the added advantage of merit rating provisions under which, beginning in 1942, those employers who succeed in measurably stabilizing their employment shall have the advantage of lowered rates of contribution. As contrasted with the New York law, the New Jersey Majority Plan also provides for contributions by employees, thus strengthening the resources of the pool and making possible a longer period of unemployment benefits without sacrificing financial soundness.

New Jersey industry is very sensitive to changes in business conditions. If a system of unemployment insurance had been in operation in this State during 1933, over 40 per cent of the workers covered would have been unemployed. Only two States, Pennsylvania and Michigan, had a higher rate of unemployment than New Jersey. The unemployment rate for Wisconsin was *7 per cent under the general average for all States,* a fact which is of controlling significance to this State as it considers unemployment compensation plans.

ESSENTIAL CONSIDERATIONS TO BE WEIGHED

Considerations to be weighed in deciding whether the Legislature shall accept the recommendation proposed by the majority of the Social Security Commission are:

1. Does this State desire to provide a system of unemployment compensation insurance which will be financially sound and which will be able to carry out its contract with the employee group even under the adverse conditions of an industrial depression similar to that from which the United States is at present emerging?

Or shall the financial soundness possible under the pooled fund be sacrificed to hold employers' contributions intact in reserve accounts available for the payment of benefits only to their own employees?

The second of these important considerations is:

2. Does New Jersey desire to give liberal unemployment compensation benefits to employees who lose their jobs, and

Does this State desire to make certain that the unemployed workman shall receive the maximum possible when contributions of both employer and employee are held in a single State pool?

Under the Majority Plan these benefits amount approximately to half pay, up to $15.00 maximum per week, for a period of sixteen weeks.

As has been shown elsewhere in this report, there is every reason to believe that the Majority Plan of the Commission would remain solvent and able to pay full benefits throughout a depression equal to anything experienced in the past.

Any dividing up of reserves according to employers fails to spread the employer's risk. *Consequently an employer's rate of contribution will fluctuate widely and frequently with changes in business conditions.* Especially will the tax rate on employers of less than 100 employees fluctuate. (Most of the employers covered in New Jersey fall in this category.) With any misfortune to the employer or drop in his business, his relatively small reserve would rapidly dwindle so that *his tax rate for unemployment compensation might jump from zero to four per cent under an employer reserve plan with its 15,000 separate employer reserves. Such sharp fluctuations in tax rates would harass business and possibly create more unemployment during a depression.*

It is unsound to base an unemployment compensation plan on the improvident notion that contributions may cease in good times and that penalty tax rates should be imposed on employers during bad times when higher taxes hurt most. An employer reserve plan does this.

The Majority Plan, on the other hand, is conservative. It is based on the tried insurance principle of setting aside funds in good times to meet bad times. It is not predicated on the notion that an individual employer deserves full credit for good times and full blame for business recessions. It does, however, recognize the common insurance practice of varying the premium with the risk as indicated by years of experience. Under the Majority Plan, an employer's merit, or experience, rating for tax purposes is adjusted to his previous experience over a period of as many as ten years. Merit rating provisions of this plan are sufficiently flexible to permit improvement in rate adjustments such as has occurred in casualty insurance.

Plan D Gives Employees More Adequate Protection

Not only does a single reserve for all spread the employer's risk, but also gives the workers more adequate protection. There is safety in numbers. A reserve covering 1,100,000 workers is less likely to become exhausted than one covering but 8 or 10 employees under an employer reserve law. *Even in a year like 1934, under the Majority Plan, more money would have been flowing into the fund than was being withdrawn from it in the form of benefits to unemployed workers.* Many individual employer reserves, under an employer reserve plan, had it been in force, would have been exhausted and laid off employees would have had to look to public relief funds for the necessities of life.

SEPARATE EMPLOYER RESERVE PLAN UNFAIR TO EMPLOYERS AND EMPLOYEES

Under an employer reserve plan it is so certain that many of the segregated employer reserves would become exhausted early in a depression that it must provide for smaller benefits than the worker normally is entitled to receive the moment his employer's small reserve begins to vanish. In that event *the worker never gets his full benefits.* This was one of the reasons why Utah, after enacting an employer reserve law, repealed it a year and a half later. Now only Wisconsin has that type of law.

WHY WISCONSIN HAS AN EMPLOYER RESERVE LAW

It may be well to examine the history of the Wisconsin, or employer reserve, type of unemployment compensation. Wisconsin industry is inherently much more stable than is the case with New Jersey industry. The proportion of capital goods produced in New Jersey is much greater than is the case in Wisconsin, a fact which increases this State's fluctuations of employment. The industrial population affected by an unemployment compensation law in the State of Wisconsin is approximately only one-fourth as large as that of New Jersey. Moreover, the State of Wisconsin is much more agricultural in its characteristics than is New Jersey. These factors render any weakness of the Wisconsin law less serious than would be the case with a similar law applied in this State.

Wisconsin was one of the first States seriously to consider the advantages of an unemployment compensation plan. Always a leader in enacting welfare legislation, it is now more than ten years since the first unemployment bill was introduced into the Wisconsin Legislature. At the time the law was finally passed, Wisconsin was standing alone, a pioneer ready to sacrifice some of her industrial advantages in case it might be necessary to lose industries to competing States. She was willing to impose upon her employers a small tax on payrolls in the interest of future stability and improved living conditions even at the very real risk of driving industries away. In order to make it politically possible to take even the shortest of steps in this direction, however, it was necessary to limit the scope of the plan to the smallest possible margin of cost and to lay emphasis upon the possibility of the employer's escaping any contributions whatever if he were in fact able to give his employees fairly stable work.

In contrast, New Jersey stands in a vastly different position at the present time. The States of New York, Pennsylvania, Connecticut, and Massachusetts—all nearby industrial competitors, have enacted unemployment compensation laws within the framework set up by the Federal Social Security Act and the competitive handicap to be placed on our employers is nil since employers, even in those States which do not have unemployment compensation laws, will be required to pay an equivalent tax into the Federal Treasury.

Moreover, the provisions of the Social Security Act are such that the minimum unemployment compensation terms permitted to receive full Federal recognition are those of which the Wisconsin plan is an example. It is fair to believe that if Wisconsin were facing the problem of enacting a new unemployment compensation plan today, and were not committed to the compromises inherent in her present law, a plan much more comparable to that proposed by the majority of the New Jersey Social Security Commission undoubtedly would be enacted.

COMMISSION FAVORS A FINANCIALLY SOUND AND LIBERAL MEASURE

It has been the desire of the New Jersey Social Security Commission to produce a plan of unemployment compensation which would bear a true relationship to the advanced labor legislation and public welfare legislation for which this State has long been distinguished. It is reasonable to suggest that Plan D achieves this aim in full measure, particularly since administrative provisions originated for it may be regarded as being at least a year in advance of anything proposed in any other State. Most serious consideration was given to two specific objectives in drafting the administrative provisions of Plan D. These were:

1. It was deemed absolutely essential to keep out so far as possible the eccentricities incidental to partisan politics. The Civil Service provisions for employees are recommended. If appointments were to be made on a basis of "political clearance" those who were appointed to these positions would, in a State like New Jersey, where political control swings frequently from one party to another, seldom become familiar with their work to a point of even moderate efficiency before they would be replaced by others. The proposed Commission, made up of outstanding unsalaried citizens is a device which has been successfully used many times in New Jersey to promote effective administration of a public service requiring continuous policies and stable organization.

2. The second objective was to reduce to a minimum the necessary reporting and computation required for the administration of unemployment compensation. This has been achieved first, by an intensive simplification of the methods of reporting and a reduction of the number of required reports from employers; second, by extreme simplification of the accounting for employees with only quarterly posting except as they become eligible for benefits; and, third, the simplification of the formulae upon which contributions and benefits would be computed.

In the interest of the financial stability of individual employees it was deemd desirable to pay the maximum rate of benefit possible even to those who had had insufficient preceding employment to entitle them to the payment of full benefits, cutting down the amount to be paid an insured worker by shortening the duration of his period of benefit rather than by paying him a smaller amount over a longer period.

It was the deliberate policy of the majority members of this Commission to require employee contributions as well as contributions by employers. *This policy, it will be noted, was concurred in by nearly all witnesses at the Commission's hearing and by the Labor representatives of the Commission.*

REASONS FOR EMPLOYEE CONTRIBUTIONS

Following are the reasons for employee contributions:

1. Employee contributions enable the State pool to pay benefits for a longer period of lay-off than would be possible without funds received from this source.

2. *Without such contributions,* or their equivalent derived from some other source, the computations described earlier in this report indicate that the theoretical New Jersey act set up in 1922 and continued down to the present time would have been exhausted in 1932 or 1933 and it would then have been necessary to bring in additional funds in order to restore the solvency of the pool.

3. Participation by the employee avoids any stigma of "State socialism" or "paternalism".

4. Participation by the employee as well as the employer, it is believed, will invite alertness on the part of every type of citizen to preserve the integrity of the unemployment compensation system, and will tend to eliminate malingering and fraud. It should be emphasized that the Labor representatives of the Commission have deliberately endorsed the employee participation provided in the Majority Plan for the above reasons. These representatives believe, and they have repeatedly expressed themselves as believing, that the American worker will be glad to participate to the

full extent of his ability in a step forward of such far-reaching significance to our people.

Although Plan D was placed before the citizens of New Jersey only a few days before the date of the public hearing, it should be noted that in spite of this handicap it received the endorsement and support of a large majority of organizations and individuals appearing. It should be further observed that the fundamental principle of a pooled fund has been adopted by all but one State which has enacted an unemployed compensation law.

Detailed studies of the employment experience of firms in various States indicate that the single reserve plan is, in the words of the Massachusetts Commission, ''the soundest way of making the fund financially secure.'' For example, a study of the personnel records of 14 Ohio concerns from 1923 to 1931 made by the Bureau of Business Research of Ohio State University showed that, with a single reserve fund, all the employees of these 14 firms would have received full benefits at a tax of two and one-half per cent of total payrolls. Under a separate employer reserve plan, 8 of the 14 firms would have been unable to pay their employees full benefits even with a three per cent tax.

It is on the basis of such studies that State after State has adopted a single reserve plan. Well over 90 per cent of all employees covered by State unemployment insurance plans are now fully protected by a single, State-wide reserve. The Commissions in the various States, after considerable study, have come to the conclusion that the separate employer reserve, or Wisconsin, Plan has the following serious defects:

1. It is more costly and complicated to administer.
2. It gives workers less security and smaller benefits.
3. It provides absolutely unequal benefits to equally deserving neighbors.
4. It penalizes more industrious workers because ''first lay-offs'' draw down the employer's small reserve, leaving little or nothing for those last laid off.

5. It intensifies the worker's misfortune by making both his benefits and his job depend on the fortunes of one employer hiring as few as 8 workers.

6. It unstabilizes business by abruptly increasing the employer's tax when his business is doing badly.

7. It fails to reduce relief costs as much as they would be reduced under a single, State-wide reserve plan.

8. It penalizes workers, employers, and property taxpayers in localities where employment decreases sharply during depressions.

Under the separate employer reserve plan, rates of benefit are necessarily fortuitous, varying with the employer's fortune or misfortune. The unemployed worker cannot tell what benefits he may get. If the employer's business is in bad shape, his reserve will be in bad shape also, and his laid off workers will soon be applying for poor relief.

As the Massachusetts Commission pointed out, the Wisconsin plan "does not afford security to the very ones for whom we are seeking security." *In the past, unemployment in New Jersey has been especially severe in building, metals, heavy industry, and textiles as well as some other lines of business. One-third of the relief clients in New Jersey are normally employed in the building and the metal trades.* Unless workers in such occupations are given *adequate protection under a single reserve plan,* relief costs will rise sharply with each increase in unemployment.

Only by a single, State-wide reserve plan will equally deserving workers in every part of the State receive equal benefits at all times. Plan D will give workers in this State greater protection and far larger benefits than they could hope to get under an employer reserve type law.

The proposed plan would enhance the opportunity for interstate agreements with the pooled fund systems of neighboring States like New York and Pennsylvania. If New Jersey adopts a similar law, these States would more readily enter into agreements to pay benefits to workers resident here but previously employed out of the State. This would save some New Jersey workers from reporting to out-of-State employment exchanges.

To sum up: The proposed plan for unemployment compensation applies the principle of insurance to the problem of unemployment on the fairest, most economical, and most easily administered basis it was possible after fifteen months of study, consultation, and research, to devise. The proposed plan is a New Jersey Plan. It has been tested with the figures for New Jersey during the greatest industrial disaster of history and shows a definite survival value.

No other plan, of the many considered by this Commission, would measure up to the requirements of our highly industrialized State.

Moreover, the proposed plan is not political or partisan in its conception or its execution. Members of both major political parties have united in its support, believing that only by ignoring personal and partisan consideration could they draft a plan of unemployment compensation worthy of the support of the Legislature and of the people of New Jersey.

The foregoing report is submitted as a Majority Report by those members of the Commission whose names appear below:

Senators

Frank Durand, *Monmouth*
President of Senate
Theodore Dawes, *Warren*
Robert C. Hendrickson, *Gloucester*

Assemblymen

Dr. Marcus W. Newcomb, *Burlington*
Speaker of the House
Henry Young, Jr., *Essex*

Mrs. Elizabeth Harris, *Vice Chairman,*
Social Security Commission

Dr. Robert P. Fischelis, *Secretary,*
Conference of Allied Medical Professions

William J. Ellis, *Secretary,*
Commissioner of Institutions and Agencies

John J. Toohey, *Commissioner of Labor*

Vincent J. Murphy, *Secretary-Treasurer,*
New Jersey State Federation of Labor

PART IV

BRIEF RESUME AND ANALYSIS OF UNEMPLOYMENT COMPENSATION "BILL D" PROPOSED BY THE NEW JERSEY COMMISSION

I. Purpose of Act

Public policy of State requires regulation under the police power to stabilize employment, reduce hazards of economic insecurity due to involuntary unemployment, and thereby limit relief demands upon the State in the future. (Sec. 2.)

II. Contributions

By Employers

Contribution by employers of eight or more based on *annual* payroll, amounting to .9% for 1936, 1.8% for 1937, and 2.7% thereafter except as affected by merit rating system. (Sec. 7 (a), (b) and (c).)

Employer's contribution to be paid by him, not out of worker's pay or payroll; any waiver or contrary agreement by worker invalid. (Secs. 7 (a) and 15 (a).)

By Workers

Contribution of 1% of wages after 1937, to be deducted from pay envelope by employer. Full responsibility for collection on employer. (Secs. 7 (d) and 14 (a), (b) and (c).)

Coverage

Identical with Federal tax provided in Title IX of Social Security Act. (Sec. 19 (g), (h) and (i).)

Provision made for additional coverage on voluntary basis. (Sec. 8.)

Nature of Fund

All contributions pooled but separate accounts maintained for each employer for merit rating. (Secs. 7 (c) and 10.)

Merit Rating

Reduction in employer contributions after 1941 to 1.8% if excess of contributions over benefits chargeable to employer's account equals 7.5% or more of average annual payroll and to .9% if excess 10% or more of average annual payroll. Reductions restricted when fund less than prescribed ratio to total benefits paid. (Sec. 7 (c).)

Increase in employer contributions to 3.6% where chargeable benefits are in excess of contributions. (Sec. 7 (c).)

III. BENEFITS

Rate

Fifty per cent of full-time weekly wages, but not more than $15 a week nor less than $5 (or three-fourths of full-time weekly wage, whichever is lesser.) (Sec. 3 (b).)

Full-time weekly wage rate based on report of last employer *or,* on finding of Commission, as one-thirteenth of total wages in best quarter of two-year period. (Sec. 3 (c).)

Duration

Maximum in any benefit year not to exceed sixteen times weekly benefit or one-sixth of total wages during base period (one year), whichever is lesser. (Sec. 3 (d).)

Conditions of Eligibility

Two weeks "waiting period" within 13 preceding claim; registration at employment exchange; formal claim to be filed; must have earned sixteen times weekly benefit amount in one-year period preceding; must be able to work and available for work. (Secs. 4 and 6 (a) and (b).)

Disqualifications

Claimant disqualified from receiving benefits for three weeks, in addition to waiting period, for justifiable discharge, voluntary quitting, or refusal to accept suitable work, and for period during which unemployment due directly to trade dispute. "Suitable employment" defined to protect worker as individual and as member of labor organization. (Sec. 5 (a), (b), (c) and (d).)

Partial disqualification or reduction of benefits in relation to wages in lieu of notice, disability compensation, or old age benefit received during unemployed period. (Sec. 5 (e).)

Method of Payment

Through employment offices or other approved agencies. (Sec. 3 (a).)

IV. APPEALS

Appeal from initial decisions on all claims to local appeal tribunals with impartial chairman, one representative of employers and one representative of workers. (Sec. 6 (b), (c) and (d).)

Secondary appeal to impartial State Board of Review of three members appointed from Civil Service lists. (Secs. 6 (e) and 10 (d).)

Final appeal to courts when administrative remedies are exhausted. (Secs. 6 (h) and (i).)

Appeals to afford full and impartial review, not limited to technical rules of evidence and procedure (Sec. 6 (f)); limitation on fees for protection of claimant. (Secs. 6 (g) and 15 (b).)

V. FINANCES AND ACCOUNTS

Unemployment Compensation Fund

Entire contribution and all income therefrom used for payment of benefits. State Treasurer to act as treasurer and custodian. All such funds except sums necessary for current benefit payments to be deposited with U. S. Treasury as required by section 904 of Social Security Act. (Sec. 9 (a), (b) and (c).)

Provision for management of funds by State Treasurer upon discontinuance of Federal Unemployment Trust Fund. (Sec. 9 (d).)

Administration Fund

Separate and distinct fund to be maintained by State Treasurer for administrative costs, balances to be continuously available for purposes of the act. Fund to include State appropriations and Federal grants under Social Security Act. Special account to be maintained for employment service. (Sec. 13.)

Refunds

Provisions made for refunds necessary in adjustment of contributions. (Sec. 14 (d).)

VI. ADMINISTRATION

Unemployment Compensation Commission of 7 members, unsalaried, appointed by Governor and Senate, with overlapping terms, as policy-making body and with direct responsibility and broad general powers to administer the act. (Secs. 10 and 11.)

Full time Executive Director, appointed by Commission, in charge of operation. (Sec. 10 (b).)

Separate divisions for Unemployment Service and other administrative units under directors responsible to Executive Director. (Sec. 10 (c).)

Entire staff subject to Civil Service. (Secs. 10 (b) and 11 (d).)

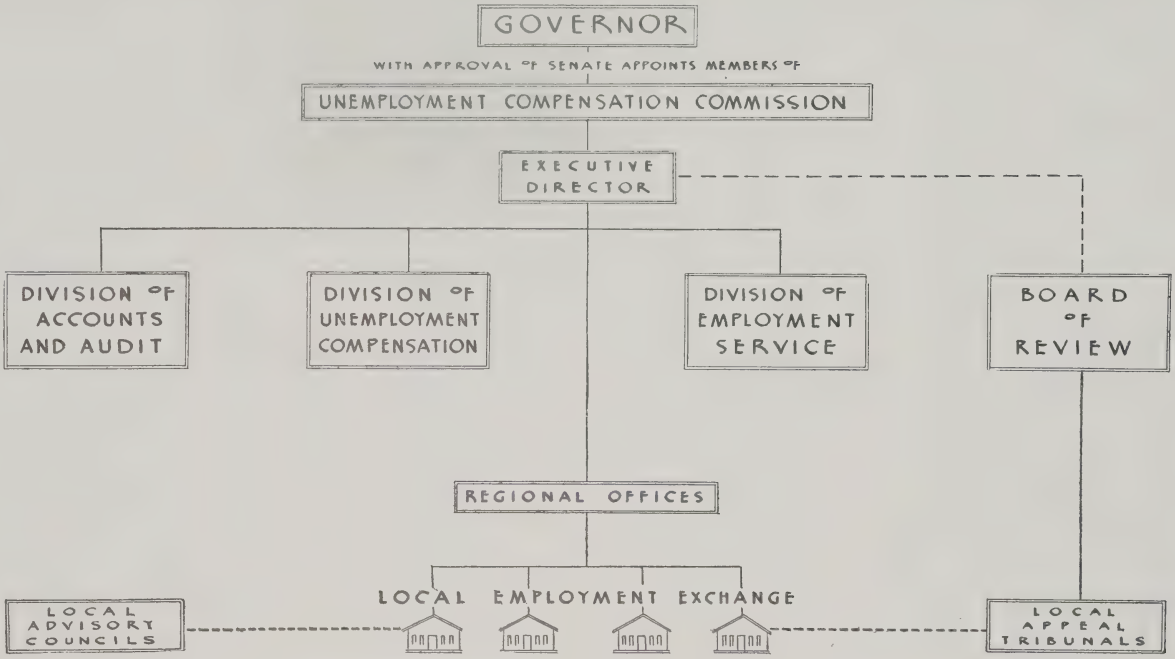
State and local unpaid advisory councils with equal representation of employers and workers and representatives of the public. (Sec. 11 (e).)

VII. EMPLOYMENT SERVICE

State Employment Service transferred from Department of Labor to Unemployment Compensation Commission. Federal grants under Wagner-Peyser Act available on a matching basis to finance costs of administration, State appropriation authorized. (Sec. 12.)

Commission charged to study additional methods of stabilizing employment and meeting unemployment emergencies. (Sec. 11 (f).)

ORGANIZATION
OF
STATE UNEMPLOYMENT COMPENSATION SERVICES


GOVERNOR
WITH APPROVAL OF SENATE APPOINTS MEMBERS OF
UNEMPLOYMENT COMPENSATION COMMISSION
EXECUTIVE DIRECTOR
DIVISION OF ACCOUNTS AND AUDIT
DIVISION OF UNEMPLOYMENT COMPENSATION
DIVISION OF EMPLOYMENT SERVICE
BOARD OF REVIEW
REGIONAL OFFICES
LOCAL EMPLOYMENT EXCHANGE
LOCAL ADVISORY COUNCILS
LOCAL APPEAL TRIBUNALS

VIII. Records and Reports

Greatly simplified, giving discretion to Commission, so that with expected adjustments employer tax and information returns may be on quarterly basis and identical in form and coverage to those for old age benefit tax. (Sec. 11 (g) and (k).)

All records confidential except for legitimate usage; protection against self-incrimination afforded. (Sec. 11 (g) and (j).)

IX. Interstate Comity

Employment and all elements of benefit determination so defined as to permit ready determination of status of employees of interstate employers. (Sec. 19.)

Provision for reciprocity agreements with other States or Federal Government as to benefit payments. (Sec. 21.)

X. Part-Time Workers

Provision for special determination of status of workers regularly employed on part-time basis so benefits of act may be made available to them. (Sec. 20.)

XI. Penalties and Legal Process

Specific penalties provided for all violations of act. (Sec. 16.)

Commission given power to issue subpœna, swear and question witnesses, etc. (Sec. 11 (h) and (i).)

Proceedings involving questions under the act given preference on court calendars, and claims of Commission given priority in receivership or bankruptcy. (Sec. 14.)

Commission to be represented in court by employed attorney or Attorney-General. (Sec. 17.)

XII. LIMITATION OF STATE'S LIABILITY

State not liable for payment of benefits in excess of sums available in Unemployment Compensation Fund. (Sec. 18.)

Legislature reserves right to amend, alter, or repeal. (Sec. 22.)

XIII. CONSTITUTIONALITY

Invalidity of part of act not to affect whole act. (Sec. 23.)

PART V

UNEMPLOYMENT COMPENSATION "BILL D"

Proposed by the Majority of the Commission

AN ACT

To provide for the establishment and administration of unemployment compensation, providing penalties and making appropriations.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

SHORT TITLE

Section 1. This act shall be known and may be cited as the "Unemployment Compensation Law."

DECLARATION OF STATE PUBLIC POLICY

Sec. 2. As a guide to the interpretation and application of this act, the public policy of this State is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this State. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this State require the enactment of this measure, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed after qualifying periods of employment.

BENEFITS

Sec. 3. (a) Payment of Benefits.—Twenty-five months after the date when contributions first accrue under this act, benefits shall become payable from the fund. All benefits shall be paid through employment offices or such other agencies as may be designated, in accordance with such regulations as may be prescribed hereunder.

(b) Weekly Benefit Amount for Total Unemployment.—Each eligible individual who is totally unemployed (as defined in section 19 (m) (1)) in any week shall be paid with respect to such week, benefits (computed to the next highest multiple of twenty cents) at the rate of fifty per centum of his full-time weekly wages but not more than $15 per week, nor less than either $5 or three-fourths of his full-time weekly wage, whichever is the lesser.

(c) Determination of Full-Time Weekly Wage—

(1) The full-time weekly wage of any individual means the weekly wages that such individual would receive if he were employed at his most recent wage rate during his base year and for the customary scheduled full-time week prevailing for his occupation in the enterprise in which he last earned wages during his base year.

(2) If the commission finds that the full-time weekly wage, as above defined, would be unreasonable or arbitrary or not readily determinable with respect to any individual, the full-time weekly wage of such individual shall be deemed to be one-thirteenth of his total wages in that quarter in which such total wages were highest during the first eight out of the last nine completed calendar quarters immediately preceding the first day of his benefit year.

(d) Duration of Benefits.—The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed one-sixth of his total wages during his base year or sixteen times his weekly benefit amount, whichever is the lesser.

BENEFIT ELIGIBILITY CONDITIONS

Sec. 4. An unemployed individual shall be eligible to receive benefits with respect to any week only if it appears that—

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the commission may prescribe.

(b) He has made a claim for benefits in accordance with the provisions of section 6 (a) of this act.

(c) He is able to work, and is available for work.

(d) Prior to any week for which he claims benefits he has been totally unemployed for a waiting period of two weeks, which said weeks need not be consecutive. No week shall be counted as a week of total unemployment for the purposes of this subsection:

(1) if benefits have been paid with respect thereto;

(2) unless the individual was eligible for benefits with respect thereto in all respects except for the requirements of subsections (b) and (e) of this section;

(3) unless it occurs within the thirteen consecutive weeks preceding the week for which he claims benefits, provided that this condition shall not interrupt the payment of benefits for consecutive weeks of unemployment, nor require any individual who, prior to the first day of his benefit year, shall have accumulated such two waiting period weeks, to accumulate more than three additional waiting period weeks during his ensuing benefit year;

(4) unless it occurs after benefits first could become payable to any individual under this act;

(e) He has within his base year, earned wages of not less than sixteen times his weekly benefit amount.

DISQUALIFICATION FOR BENEFITS

Sec. 5. An individual shall be disqualified for benefits—

(a) For the week in which he has left work voluntarily without good cause, and for the three weeks which immediately follow such week (in addition to the waiting period), as determined in each case.

(b) For the week in which he has been discharged for misconduct connected with his work, and for the three weeks which immediately follow such week (in addition to the waiting period), as determined in each case.

(c) If it is found that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the executive director or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the executive director. Such disqualification shall continue for the week in which such failure occurred and for the three weeks which immediately follow such week (in addition to the waiting period) as determined.

(1) In determining whether or not any work is suitable for an individual, consideration shall be given to the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) if the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which it is found that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the board of review that—

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute:

Provided, That if in any case in which (1) or (2) above applies separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

(e) For any week with respect to which he is receiving or has received remuneration in the form of—

(1) Remuneration in lieu of notice;

(2) Compensation for temporary partial disability under the Workmen's Compensation Law of any State or under a similar law of the United States; or

(3) Old-age benefits under title II of the Social Security Act, as amended, or similar payments under any act of Congress:

Provided, That if such remuneration is less than the benefits which would otherwise be due under this act, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

CLAIMS FOR BENEFITS

Sec. 6. (a) Filing.—Claims for benefits shall be made in accordance with such regulations as the commission may approve. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the commission to each employer without cost to him.

(b) Initial Determination.—A representative designated by the executive director, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal or to the board of review, which shall make its determinations with respect thereto in accordance with the procedure described in subsection (c) of this section, except that in any case in which the payment or denial of benefits will be determined by the provisions of section 5 (d) of this act, the deputy shall promptly transmit his full findings of fact with respect to that subsection to the board of review, which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that subsection. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. Unless the claimant or any such interested party, within five calendar days after the delivery of such notification, or within seven calendar days after such notification was mailed to his last-known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period prior to the final determination of the board of review, shall be paid only after such determination:

Provided, That if an appeal tribunal affirms a decision of a deputy, or the board of review affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

(c) Appeals.—Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the board of review, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of this section.

(d) Appeal Tribunals.—To hear and decide disputed claims, the executive director with the approval of the commission shall establish one or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of three members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the commission and be paid a fee of not more than $20 per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the commission in any case in which he is an interested party. The executive director may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

(e) Board of Review.—The board of review may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The board of review shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and by the deputy whose decision has been overruled or modified by an appeal tribunal. The board of review may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the board of review shall be heard by a quorum thereof in accordance with the requirements in subsection (c) of this section. The board of review shall promptly notify the interested parties of its findings and decision.

(f) Procedure.—The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the board of review for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(g) Witness Fees.—Witnesses subpœnaed pursuant to this section shall be allowed fees at a rate fixed by the commission. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this act.

(h) Appeal to Courts.—Any decision of the board of review in the absence of an appeal therefrom as herein provided shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the board of review as provided by this act. The board of review shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney who may be a regular salaried employee of the board of review or has been designated by it for that purpose, or at the board of review's request, by the attorney-general.

(i) Court Review.—Within ten days after the decision of the board of review has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in any court of competent jurisdiction, against the board of review for the review of its decision, in which action any other party to the proceeding before the board of review shall be made a defendant. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the board of review or upon such person as the board of review may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the board of review shall forthwith mail one such copy to each such defendant. With its answer, the board of review shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. The board of review may also, in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of the board of review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law of this State. An appeal may be taken to the Court of Errors and Appeals of New Jersey, in the same manner, but not inconsistent with the provisions of this act, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the board of review and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the board of review shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the board of review shall so order.

CONTRIBUTIONS

Sec. 7. (a) Payment—

(1) On and after December 1, 1936, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages payable for employment (as defined in section 19 (i)) occurring during such calendar year, except that for the month of December, 1936, such contributions shall accrue and become payable with respect to wages payable for employment during the month of December, 1936. Such contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulations as may be prescribed, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(b) Rate of Contribution.—Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

(1) Ten and eight-tenths per centum with respect to employment during the month of December, 1936; provided, that if the total of such contributions at such ten and eight-tenths per centum rate equals less than nine-tenths of one per centum of the annual payroll of any employer for the calendar year 1936, such employer shall pay, not later than January 15, 1937, an additional lump-sum contribution with respect to employment for such one month's period beginning December 1, 1936, equal to the difference between nine-tenths of one per centum of his annual payroll of the calendar year 1936 and the total of his contributions at such ten and eight-tenths per centum for such one month's period beginning December 1, 1936; and provided further, that the total of such contributions with respect to employment for such one month's period beginning December 1, 1936, shall not exceed nine-tenths of one per centum of such employer's annual payroll for the calendar year 1936; provided,

further, that if the Federal Social Security Act be amended or an extension thereunder be granted to permit payment of the tax on payrolls provided in Sec. 901 (1), at a date later than January 31, 1937, the commission may, by regulation, postpone to a later date the required payment of contributions as provided in this subsection.

(2) One and eight-tenths per centum with respect to employment during the calendar year 1937;

(3) Two and seven-tenths per centum with respect to employment during the calendar years 1938, 1939, 1940 and 1941; and

(4) With respect to employment after December 31, 1941, the percentage determined pursuant to subsection (c) of this section.

(c) Future Rates Based on Benefit Experience.—

(1) A separate account for each employer shall be maintained and this shall be credited with all the contributions which he has paid on his own behalf. But nothing in this act shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged against the account of his most recent employers against whose accounts the maximum charges hereunder have not previously been made in the inverse chronological order in which the employment of such individual occurred, but the maximum amount so charged shall not exceed one-sixth of the wages payable to such individual by each such employer for employment on and after the first day of the nine completed calendar quarters immediately preceding such individual's benefit year, or $240, whichever is the lesser, but this provision shall not be construed to limit the duration of benefits payable pursuant to section 3 (d). The commission shall by general rules prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment during the same week.

(2) The commission may prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

(3) Each employer's rate shall be two and seven-tenths per centum, except as otherwise provided in the following provisions. No employer's rate shall be less than two and seven-tenths per centum unless and until there shall have been three calendar years throughout which any individual in his employ could have received benefits if eligible.

(4) Each employer's rate for the twelve months commencing January 1 of any calendar year shall be determined on the basis of his record up to the beginning of such calendar year. If, at the beginning of such calendar year, the total of all his contributions, paid on his own behalf, for all past years exceeds the total benefits

charged to his account for all such years, his contribution rate shall be—

(A) One and eight-tenths per centum, if such excess equals or exceeds 7½ but is less than 10 per centum of his average annual payroll (as defined in section 19 (a) (2));

(B) Nine-tenths of 1 per centum, if such excess equals or exceeds 10 per centum of his average annual payroll.

If the total of his contributions, paid on his own behalf for all past periods or for the past 120 consecutive calendar months, whichever period is more advantageous to such employer for the purposes of this paragraph, is less than the total benefits charged against his account during the same period, his rate shall be 3 6/10 per centum.

(5) No employer's rate for the period of twelve months commencing January 1st of any calendar year shall be less than 2 7/10 per centum, unless the total assets of the fund, excluding contributions not yet paid at the beginning of such calendar year, exceed the total benefits paid from the fund within the last preceding year; and no employer's rate shall be less than 1 8/10 per centum unless such assets at such time were at least twice the total benefits paid from the fund within such last preceding year.

(d) Contribution by Workers—

(1) Each worker shall contribute to the fund 1 per centum of his wages paid by an employer with respect to his employment which occurs after December 31, 1937, and after such employer has satisfied the conditions set forth in section 19 (h) of this act with respect to becoming an employer. Each employer shall, notwithstanding any provisions of law in this State to the contrary, withhold in trust the amount of his workers' contributions from their wages at the time such wages are paid, shall show such deduction on his payroll records, shall furnish such evidence thereof to his workers as the commission may prescribe, and shall transmit all such contributions, in addition to his own contributions, to the office of the commission in such manner and at such times as may be prescribed. If any employer fails to deduct the contributions of any of his workers at the time their wages are paid, or fails to make a deduction therefor at the time wages are paid for the next succeeding payroll period, he alone shall thereafter be liable for such contributions, and for the purposes of section 14 hereof, such contributions shall be treated as employer's contributions required from him. As used in this act, except when the context clearly requires otherwise, the term "contributions" shall include the contributions of workers pursuant to this section.

(2) If an individual does not receive any wages from the employing unit which for the purposes of this act is treated as his employer, or receives his wages from some other employing unit, such employer shall nevertheless be liable for such individual's contributions in the first instance; and after payment thereof such employer may deduct the amount of such contributions from any sums payable by him to such employing unit, or may recover the amount of

such contributions from such employing unit or in the absence of such an employing unit, from such individual, in a civil action for debt, provided proceedings therefor are instituted within three months after the date on which such contributions are payable. General rules shall be prescribed whereby such an employing unit may recover the amount of such contributions from such individuals in the same manner as if it were the employer.

(3) Every employer who has elected to become an employer subject to this act or to cease to be an employer subject to this act, pursuant to the provisions of section 8, shall post and maintain printed notices of such election on his premises, of such design, in such numbers, and at such places as the executive director may determine to be necessary to give notice thereof to persons in his service.

(4) Contributions by workers, payable to the commission as herein provided, shall be exempt from garnishment, attachment, execution, or any other remedy for the collection of debts.

PERIOD, ELECTION, AND TERMINATION OF EMPLOYER'S COVERAGE

Sec. 8. (a) Any employing unit which is or becomes an employer subject to this act within any calendar year shall be subject to this act during the whole of such calendar year.

(b) Except as otherwise provided in subsection (c) of this section, an employing unit shall cease to be an employer subject to this act only as of the first day of January of any calendar year, if it files with the commission, prior to the fifth day of January of such year, a written application for termination of coverage, and the commission finds that there were no twenty different days, each day being in a different week within the preceding calendar year, within which such employing unit employed eight or more individuals in employment subject to this act. For the purpose of this subsection, the two or more employing units mentioned in paragraph (2) or (3) or (4) of section 19 (h) shall be treated as a single employing unit.

(c) (1) An employing unit, not otherwise subject to this act, which files with the commission its written election to become an employer subject hereto for not less than two calendar years, shall, with the written approval of such election by the commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, provided that the commission shall not approve such election by such employing unit to become an employer subject hereto if written objections on the part of a substantial proportion of the individuals in the employ of such employing unit are presented to the commission within ten days following the filing of such election, and shall cease to be subject hereto as of January 1st of any calendar year subsequent to such two calendar years, only if at least thirty days prior to such first day of January, it has filed with the commission a written notice to that effect.

(2) Any employing unit for which services that do not constitute employment as defined in this act are performed, may file with the

commission a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this act for not less than two calendar years, provided written objections on the part of a substantial proportion of such individuals affected are not presented to the commission within ten days following the filing of such election. Upon the written approval of such election by the commission, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1st of any calendar year subsequent to such two calendar years, only if at least thirty days prior to such first day of January such employing unit has filed with the commission a written notice to that effect.

UNEMPLOYMENT COMPENSATION FUND

Sec. 9. (a) Establishment and Control.—There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an unemployment compensation fund, which shall be administered by the commission exclusively for the purposes of this act. This fund shall consist of (1) all contributions collected under this act, together with any interest thereon collected pursuant to section 14 (a) of this act; (2) all fines and penalties collected pursuant to the provisions of this act; (3) interest earned upon any moneys in the fund; (4) any property or securities acquired through the use of moneys belonging to the fund; and (5) all earnings of such property or securities. All moneys in the fund shall be mingled and undivided.

(b) Accounts and Deposit.—The Treasurer of the State of New Jersey shall be ex-officio the treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the commission and shall issue his warrants upon it in accordance with such regulations as the commission shall prescribe. He shall maintain within the fund three separate accounts: (1) A clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to section 14 (d) of this act may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provisions of law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this State's account in the unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the commission and in a form prescribed by law or approved by the attorney-general. Premiums for said bond shall be paid from the administration fund.

(c) Withdrawals.—Moneys shall be requisitioned from this State's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission. The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by State officers of money in their custody. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the counter-signature of the executive director or his duly authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of benefits during succeeding periods, or, in the discretion of the commission, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the unemployment trust fund, as provided in subsection (b) of this section.

(d) Management of Funds Upon Discontinuance of Unemployment Trust Fund.—The provisions of subsections (a), (b), and (c) to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited therein by this State for benefit purposes, together with this State's proportionate share of the earnings of such unemployment trust fund, from which no other State is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation fund of this State shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commission, in accordance with the provisions of this act: **Provided,** That such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States of America and of the State of New Jersey: **And provided further,** That such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the commission.

UNEMPLOYMENT COMPENSATION COMMISSION

Sec. 10. (a) Organization.—There is hereby created a commission to be known as the Unemployment Compensation Commission of New Jersey. It shall consist of seven members who shall be appointed by the Governor with confirmation by the Senate not more than four of whom shall be of the same political affiliation and who shall serve without salary; provided, however, that their necessary expenses shall be paid. No person may be appointed who is an officer or committee member of any political party organization. First appointees to the commission shall serve as designated by the Governor at the time of appointment, as follows: one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, one for a term of six years, and one for a term of seven years. At the expiration of initial terms, appointments shall be made for a term of seven years in each case. Any vacancies created by death, resignation or removal shall be filled by appointment for the unexpired portion of the term so vacated.

The Governor may, at any time after a fair public hearing, remove any member of the commission for gross inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office.

(b) Executive Director.—The commission shall appoint an executive director who shall be the chief executive and approval officer of the commission and its official agent for all purposes, and who shall hold office at its pleasure. He shall give his full time to the duties of this office, shall be paid a suitable salary to be fixed by the commission and shall have general charge and supervision of the work of all departments of the commission as well as any subdivisions thereof.

It shall be the duty of the executive director to administer this act with the advice of the commission; and to that end, the executive director shall have the following duties and powers:

(1) To formulate necessary rules and regulations, subject to approval by the commission.

(2) To appoint and fix the compensation of members of the staff, subject to approval by the commission; such appointments shall be made from Civil Service eligible lists.

(3) To make such expenditures as are necessary in the discharge of his functions hereunder as provided for in the budget to be approved annually by the commission, and he is hereby authorized to draw vouchers on the administration fund for the same.

(4) To draw vouchers upon the unemployment compensation fund and the appropriate accounts therein for the payment of benefits.

(5) To delegate to other persons any of the powers conferred upon him by this act, so far as is reasonably necessary.

(c) Divisions.—The executive director shall establish such administrative divisions as may be necessary to carry out the purposes of this act, subject to approval of the commission. Among such divisions shall be New Jersey State Employment Service Division, established pursuant to section 12 of this act. The New Jersey State Employment Service shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commission may find such separation to be impracticable.

(d) Board of Review.—The executive director shall appoint from Civil Service eligible lists, subject to approval of the commission, a board of review, consisting of three members whose duties shall be to act as a final appeals board in cases of dispute and to whom shall be delegated the duty of supervising the work of local appeal tribunals to be organized as provided for elsewhere in this act. No member of the board of review shall participate in any case in which he is an interested party.

(e) Powers and Duties.—The commission shall have the following specific powers and duties:

(1) To designate its chairman.

(2) To study the operation of this act and from time to time prepare recommendations to the Governor and Legislature with respect to any improvements which might be desirable.

(3) To make rules and regulations governing its own procedure.

(4) To advise the executive director and other members of the commission staff with particular respect to policies and procedures.

(f) Quorum.—Any four commissioners shall constitute a quorum. No vacancies shall impair the right of the remaining commissioners to exercise all of the powers of the commission.

ADMINISTRATION

Sec. 11. (a) Duties and Powers of the Commission.—It shall be the duty of the commission to determine all matters of policy; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end, or to administer this act, provided that the commission may delegate such power and authority to the executive director subject to their ultimate supervision and control. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this act, which the commission shall prescribe. The commission shall determine its own organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. Not later than the first day of February of each year, the commission shall submit to the

Governor a report covering the administration and operation of this act during the preceding calendar year and shall make such recommendations for amendments to this act as the commission deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the Legislature, and make recommendations with respect thereto. The commission shall make a study of the problem of paying partial benefits for partial unemployment and may, after an experience of at least three years in the payment of unemployment compensation provide for the payment of partial benefits by administrative ruling.

(b) Regulations and General and Special Rules.—General and special rules may be adopted, amended, or rescinded by the commission. General rules shall become effective ten days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the commission and shall become effective in the manner and at the time prescribed by the commission.

(c) Publication.—The commission shall cause to be printed for distribution to the public the text of this act, the commission's regulations and general rules, its annual reports to the Governor, and any other material the commission deems relevant and suitable and shall furnish the same to any person upon application therefor.

(e) Advisory Councils.—The commission shall appoint a State advisory council and local advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment, or affiliations, and of such members representing the general public as the commission may designate. Such councils shall aid the commission in formulating policies and discussing problems related to the administration of this act and in assuring impartiality and freedom from political influence in the solution of such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary expenses.

(f) Employment Stabilization.—The commission, with the advice and aid of its advisory councils, and through its appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

(g) Records and Reports.—Each employing unit shall keep true and accurate employment records, containing such information as may be prescribed. Such records shall be open to inspection and be subject to being copied by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The executive director may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which is deemed necessary for the effective administration of this act. Information thus obtained shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the employing unit's identity, but any claimant at a hearing before an appeal tribunal, the commission or the board of review, shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the commission who violates any provision of this section shall be fined not less than $20 nor more than $200, or imprisoned for not longer than ninety days, or both.

(h) Oaths and Witnesses.—In the discharge of the duties imposed by this act, the chairman of an appeal tribunal and any duly authorized representative or member of the commission, the executive director thereof or member of the board of review shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpœnas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this act.

(i) Subpœnas.—In case of contumacy by, or refusal to obey a subpœna issued to any person, any court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission or its duly authorized representative, or the board of review, shall have jurisdiction to issue to such person an order requiring such person to appear before the board of review or a member thereof, a commissioner, the commission, or its duly authorized representative, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpœna of the commission or of the board of review shall be punished by a fine of not more than $200 or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(j) Protection Against Self-Incrimination.—No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commission or the board of review or in obedience to the subpœna of a member of the commission or the executive director thereof, the board of review or a member thereof, or any duly authorized representative of the commission in any cause or proceeding before the commission, the board of review or a member thereof, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(k) State-Federal Co-operation.—In the administration of this act, the commission shall co-operate to the fullest extent consistent with the provisions of this act, with the Social Security Board, created by the Social Security Act, approved August 14, 1935, as amended; shall make such reports, in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the Social Security Board governing the expenditures of such sums as may be allotted and paid to this State under title III of the Social Security Act for the purpose of assisting in the administration of this act.

Upon request therefor the executive director shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this act.

EMPLOYMENT SERVICE

Sec. 12. (a) State Employment Service.—The employment bureau of the New Jersey Department of Labor is hereby transferred to the commission as a division thereof, which shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this act and for the purpose of performing such duties as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for co-operation with the States in the promotion of such system, and for other purposes," approved June 6, 1933 (48 Stat. 113; U. S. C., title 29, sec. 49 (c)), as amended. The said division shall be administered by a full-time salaried director, who shall be charged with the duty, subject to the supervision of the commission and the executive director, to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of Congress, as amended, and to do and perform all things necessary to secure to this State the benefits of the said act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of Congress, as amended, are hereby accepted by this State, in conformity with section four of said act, and this State will observe and comply with the requirements thereof. The New Jersey State Employment Service division is hereby designated and constituted the agency of this State for the purpose of said act. The executive director, with the approval of the commission, is empowered to appoint the director, other officers, and employees of the New Jersey State Employment Service on a non-partisan merit basis from lists of eligible persons prepared by the Civil Service Commission and in accordance with regulations prescribed by the director of the United States Employment service; provided, however, that present employees having civil service status shall retain full rights as provided in the Civil Service Act of this State.

(b) Financing.—All moneys received by this State under the said act of Congress, as amended, shall be paid into the special "employment service account" in the unemployment compensation administration fund, and said moneys are hereby made available to the New Jersey State Employment Service to be expended as provided by this section and by said act of Congress. For the purpose of establishing and maintaining free public employment offices, said division is authorized to enter into agreements with any political subdivision of this State or with any private, nonprofit organization, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the employment service account.

UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND

Sec. 13. (a) Special Fund.—There is hereby created in the State Treasury a special fund to be known as the unemployment compensation administration fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the commission. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this act, and for no other purpose whatsoever. The fund shall consist of all moneys appropriated by this State, and all moneys received from the United States of America, or any agency thereof, including the Social Security Board and the United States Employment Service, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the commission for expenditure consistent with this act. The State Treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation administration fund in an amount to be fixed by the commission and in a form prescribed by law or approved by the Attorney-General. The premiums for such bond and the premiums for the bond given by the treasurer of the unemployment compensation fund under section nine of this act shall be paid from the moneys in the unemployment compensation administration fund.

(b) Employment Service Account.—A special "employment service account" shall be maintained as a part of the unemployment compensation administration fund for the purpose of maintaining the public employment offices established pursuant to section twelve of this act and for the purpose of co-operating with the United States Employment Service. There is hereby appropriated to this account the balance of any sum previously appropriated to the employment service, and such additional sum as to equal $65,000 for the remainder of the fiscal year ending June 30, 1937. The Governor shall fix and determine and state in his annual budget message a sum sufficient to pay the estimated amount of the State's net share of the cost of the employment service as provided in this act. The Legislature shall include the amount so determined and stated in the annual appropriation bill. In addition, there shall be paid into such account the moneys designated in section 12 (b) of this act, and such moneys as are apportioned for the purposes of this account from any moneys received by this State under title III of the Social Security Act, as amended.

COLLECTION OF CONTRIBUTIONS

Sec. 14. (a) Interest on Past-Due Contributions.—Contributions unpaid on the date on which they are due and payable, as prescribed by the commission, shall bear interest at the rate of 1 per centum per month from and after such date until payment plus accrued interest is received by the commission. Interest collected pursuant to this subsection shall be paid into the unemployment compensation fund.

(b) Collection.—If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the State of New Jersey, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the workmen's compensation law of this State.

(c) Priorities Under Legal Dissolutions or Distributions.—In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or taxes and claims for remuneration of not more than $250 to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64 (b) of that act (U. S. C., title II, sec. 104 (b), as amended.

(d) Refunds.—If not later than one year after the date on which any contributions or interest thereon became due, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the commission or the executive director shall determine that such contributions or interest or any portion thereof was erroneously collected, such employer shall be allowed to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made the said amount shall be refunded, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the initiative of the commission through the executive director.

PROTECTION OF RIGHTS AND BENEFITS

Sec. 15. (a) Waiver of Rights Void.—No agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this act shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of any individual in his employ to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than $100 nor more than $1,000 or be imprisoned for not more than six months, or both.

(b) Limitation of Fees.—No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the board of review or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the board of review. Any person who violates any provision of this subsection shall, for each such offense, be fined not less than $50 nor more than $500, or imprisoned for not more than six months, or both.

(c) No Assignment of Benefits; Exemptions.—No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this act shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to such individual or his spouse or dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this subsection shall be valid.

PENALTIES

Sec. 16. (a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, either for himself or for any other person, shall be punished by a fine of not less than $20 nor more than $50, or by imprisonment for not longer than thirty days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this act, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than $20 nor more than $200, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who shall willfully violate any provision of this act or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than $20 nor more than $200, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this act while any conditions for the receipt of benefits imposed by this act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the commission, either be liable to have such sum deducted from any future benefits payable to him under this act or shall be liable to repay to the commission for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in section 14 (b) of this act for the collection of past-due contributions.

REPRESENTATION IN COURT

Sec. 17. (a) In any civil action to enforce the provisions of this act the commission and the State may be represented by any qualified attorney who is a regular salaried employee of the commission or is designated by it for this purpose or at the commission's request, by the attorney-general.

(b) All criminal actions for violation of any provision of this act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the attorney-general of the State; or, at his request and under his direction, by the prosecuting attorney of any county in which the employer has a place of business or the violator resides.

NONLIABILITY OF STATE

Sec. 18. Benefits shall be deemed to be due and payable under this act only to the extent provided in this act and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the State, the commission nor any representative thereof shall be liable for any amount in excess of such sums.

DEFINITIONS

Sec. 19. As used in this act, unless the context clearly requires otherwise:

(a) (1) "Annual payroll" means the total amount of wages payable by an employer (regardless of the time of payment) for employment during a calendar year.

(2) "Average annual payroll" means the average of the annual payrolls of any employer for the last three or five preceding calendar years, whichever average is higher.

(b) "Benefits" means the money payments payable to an individual, as provided in this act, with respect to his unemployment.

(c) The term "base year" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

(d) "Benefit year," with respect to any individual means the fifty-two consecutive week periods beginning with the first day of the first week with respect to which benefits are first payable to him, and thereafter, the fifty-two consecutive week periods beginning with the first day of the first week with respect to which benefits are next payable to him after the termination of his last preceding benefit year.

(e) "Commission" means the Unemployment Compensation Commission established by section 10 of this act, and for purposes of this act any transaction or exercise of authority by the executive director shall be deemed to be performed by the commission.

(f) "Contributions" means the money payments to the State unemployment compensation fund required by this act.

(g) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1935, had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this act. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of section 19 (h) or section 8 (c) of this act, the employing unit shall for all the purposes of this act be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such employment; except that each such contractor or subcontractor who is an employer by reason of section 19 (h) or section 8 (c) of this act shall alone be liable for the contributions measured by wages payable to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of section 19 (h) or section 8 (c) of this act, may recover the same from such contractor or subcontractor. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(h) "Employer" means:

(1) Any employing unit which for some portion of a day, but not necessarily simultaneously, in each of twenty different weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year, has or had in employment, eight or more individuals (irrespective of whether the same individuals are or were employed in each such day);

(2) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforcible means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforcible means or otherwise), and which, if treated as a single unit with such other employing unit or interests would be an employer under paragraph (1) of this subsection;

(5) Any employing unit which, having become an employer under paragraph (1), (2), (3), or (4), has not, under section 8, ceased to be an employer subject to this act; or

(6) For the effective period of its election pursuant to section 8 (c) any other employing unit which has elected to become fully subject to this act.

(i) (1) "Employment" means service, including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this State if:

(A) the service is localized in this State; or

(B) the service is not localized in any State but some of the service is performed in this State and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any State in which some part of the service is performed, but the individual's residence is in this State.

(3) Services performed within this State but not covered under paragraph (2) of this subsection shall be deemed to be employment subject to this act if contributions are not required and paid with respect to such services under an unemployment compensation law of any other State or of the Federal government.

(4) Services not covered under paragraph (2) of this subsection, and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other State or of the Federal government, shall be deemed to be employment subject to this act if the individual performing such services is a resident of this State and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act, provided written objections on the part of a substantial proportion of such

individuals affected are not presented to the commission within 10 days following the filing of such election.

(5) Service shall be deemed to be localized within a State if

(A) the service is performed entirely within such State; or

(B) the service is performed both within and without such State, but the service performed without such State is incidental to the individual's service within the State, for example, is temporary or transitory in nature or consists of isolated transactions.

(6) Services performed by an individual for remuneration shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the commission that

(A) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and

(B) such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) such individual is customarily engaged in an independently established trade, occupation, profession or business.

(7) The term "employment" shall not include:

(A) Agricultural labor;

(B) Domestic service in a private home;

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(E) Service performed in the employ of this State, or of any political subdivision thereof, or of any instrumentality of this State or its political subdivisions;

(F) Service performed in the employ of any other State or its political subdivisions, or of the United States government, or of an instrumentality of any other State or States or their political subdivisions or of the United States;

(G) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(j) "Employment office" means a free public employment office, or branch thereof, operated by this State or maintained as a part of a State-controlled system of public employment offices.

(k) "Fund" means the unemployment compensation fund established by this act, to which all contributions required and from which all benefits provided under this act shall be paid.

(l) "State" includes, in addition to the States of the United States of America, Alaska, Hawaii, and the District of Columbia.

(m) "Total unemployment."

(1) An individual shall be deemed "totally unemployed" in any week with respect to which no remuneration is payable to him and during which he performs no services (other than odd jobs or subsidiary work for which no remuneration as used in this section is payable to him).

(2) As used in this subsection, the term "remuneration" shall include only that part of remuneration for odd jobs or subsidiary work, or both, which is in excess of $3 in any one week.

(3) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulation otherwise prescribe.

(n) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this act, from which administrative expenses under this act shall be paid.

(o) "Wages" means remuneration payable by employers for employment.

(p) "Remuneration" means all compensation payable for personal services, including commissions and bonuses and the cash value of all compensation payable in any medium other than cash.

(q) "Week" means such period or periods of seven consecutive calendar days ending at midnight, as the commission may by regulation prescribe.

(r) "Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st, excluding however any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the commission may by regulation prescribe.

(s) "Weekly benefit amount."—An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for one week of total unemployment and an individual's weekly benefit amount as determined for the first week of his benefit year shall constitute his weekly benefit amount throughout such benefit year.

PART-TIME WORKERS

Sec. 20. (a) As used in this section the term "part-time worker" means an individual whose normal work is in an occupation in which his services are not required for the customary scheduled full-time hours prevailing in the establishment in which he is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which he is employed.

(b) The commission shall approve fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages required to qualify such workers for benefits. Such rules shall, with respect to such workers, supersede any inconsistent provisions of this act, but, so far as practicable, shall secure results reasonably similar to those provided in the analogous provisions of this act.

RECIPROCAL BENEFIT ARRANGEMENTS

Sec. 21. The commission is hereby authorized to enter into arrangements with the appropriate agencies of other States or the Federal government whereby potential rights to benefits accumulated under the unemployment compensation laws of several States or under such a law of the Federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

SAVING CLAUSE

Sec. 22. The legislature reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this act or by acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal this act at any time.

SEPARABILITY OF PROVISIONS

Sec. 23. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby.

EFFECTIVE DATE

Sec. 24. This act shall take effect upon passage and approval by the Governor.

STATEMENT

The purpose of this act is to create an Unemployment Compensation Commission, establish a State-wide system of unemployment compensation, provide for contributions therefor, and benefits to unemployed workers, transfer the State Employment Service to the Unemployment Compensation Commission, and make necessary appropriations in order to comply with titles 3 and 9 of the Federal Social Security Act, and to co-operate with the United States Employment Service.

PART VI

STATISTICAL TABLES SUPPORTING "PLAN D" AS SUBMITTED BY THE MAJORITY OF THE COMMISSION

TABLE I

STATE UNEMPLOYMENT COMPENSATION LAWS

December 5, 1936

Number of States with laws	Estimated compensable labor force (as of April, 1930) covered by all laws	Percentage covered of total compensable labor force in United States
20	11,541,000	51.8

Type of Law Adopted

	Employees covered	Percentage of total estimated coverage of all laws
A. **Pooled fund**		
1. New York	3,084,000	
2. Pennsylvania	2,013,000	
3. Massachusetts	1,019,000	
4. Mississippi	170,000	
5. Rhode Island	167,000	
	6,453,000	55.9
B. **Pooled fund with prescribed merit rating**†		
1. California	1,267,000	
2. Texas	795,000	
3. Connecticut	372,000	
4. Alabama	312,000	
5. Louisiana	301,000	
6. South Carolina	197,000	
7. Oregon	190,000	
8. Colorado	172,000	
9. District of Columbia	112,000	
10. New Hampshire	99,000	
11. Utah	75,000	
12. Arizona	73,000	
13. Idaho	56,000	
	4,021,000	34.9
C. **Employer reserve accounts**		
1. Indiana *	580,000	
2. Wisconsin	487,000	
	1,067,000	9.2

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* Includes partial pooling.

† Since going to press three additional States have adopted pooled fund acts.

Note.—Sources: Social Security Board estimates of coverage. Commerce Clearing House service—State laws.

TABLE II
DENSITY OF POPULATION OF FOUR STATES

(1930)

	Population	Square Miles	Population Per Square Mile
New Jersey	4,041,334	7,514	537.8
Wisconsin	2,939,006	55,256	53.2
Indiana	3,238,503	36,045	89.8
New York	12,588,066	47,654	264.2

Source: 15th Census of the U. S., 1930, Vol. I, p. 13.

TABLE III

GAINFULLY EMPLOYED PERSONS 10 YEARS AND OVER, THREE STATES

1930

	Total	Agricultural	Clerical	Forestry and Fishers	Extraction of Minerals	Mfg. and Mechanical Ind.	Transportation and Communication	Trade	Public Service	Professional	Domestic and Personal
N. J.	1,712,106	64,061	221,017	2,847	3,638	689,715	151,438	240,838	38,037	126,951	173,564
Ind.	1,251,065	249,884	88,193	1,293	21,103	433,095	103,798	152,497	17,554	79,046	104,602
Wis.	1,129,461	289,989	79,729	7,242	3,235	364,511	78,911	131,519	14,114	73,328	86,883

Source: 15th Census of the U. S., 1930, Vol. IV, p. 18.

TABLE IV

APPLICATION OF "PLAN D" TO NEW JERSEY STATISTICS OF WAGES AND EMPLOYMENT

1922-1936

Year	Total Taxes Available for Benefits	Benefits Paid Current Year	Cumulative Total of Amounts Paid in Previous Years and Current Year	Yearly Balance
1923	$80,250,000	$23,461,000	$61,916,000	$18,334,000
1924	121,990,000	33,750,000	95,666,000	26,324,000
1925	165,723,000	25,742,000	121,408,000	44,315,000
1926	210,867,000	22,781,000	144,189,000	66,678,000
1927	255,219,000	27,720,000	171,909,000	83,310,000
1928	299,787,000	30,482,000	202,391,000	97,396,000
1929	347,259,000	29,988,000	232,379,000	114,880,000
1930	385,851,000	44,988,000	277,367,000	108,484,000
1931	415,227,000	58,565,000	335,932,000	79,295,000
1932	448,267,000	45,797,000	381,729,000	66,538,000
1933	479,867,000	34,096,000	415,825,000	64,042,000
1934	517,367,000	33,652,000	449,477,000	67,890,000
1935	557,767,000	35,882,000	485,359,000	72,408,000
1936	599,567,000	30,921,000	516,280,000	83,287,000

TABLE V

COMPARISON OF BENEFITS

Case A

A man receiving $30.00 a week for full year (base period) previous to lay-off will receive as maximum benefits under:

Majority Plan	**Minority Plan**
$15.00 a week for 16 weeks	$15.00 a week for 8 3/4 weeks **if employer's account sufficient**

Case B

A man receiving $25.00 a week for full year previous to lay-off will receive as maximum benefits:

Majority Plan	**Minority Plan**
$12.50 a week for 16 weeks	$12.50 a week for 10 2/5 weeks **if employer's account sufficient**

Case C

A man receiving $20.00 a week for full year previous to lay-off will receive benefits:

Majority Plan	**Minority Plan**
$10.00 a week for 16 weeks	$10.00 a week for 13 weeks **if employer's account sufficient**

Case D

A man receiving $30.00 a week for 20 weeks in year previous to lay-off (base year) will receive in benefits under:

Majority Plan	**Minority Plan**
$15.00 a week for 6 2/3 weeks	$15.00 a week for 3 1/3 weeks **if employer's account sufficient**

Case E

A man receiving $24.00 a week for 20 weeks in year previous to lay-off (base year) will receive in benefits under:

Majority Plan	**Minority Plan**
$12.00 a week for 6 2/3 weeks	$10.00 a week for 5 weeks **if employer's account sufficient**

Case F

A man receiving $28.00 a week for 40 weeks in year previous to lay-off (base year) will receive under:

Majority Plan	Minority Plan
$14.00 a week for 13.3 weeks	$12.50 a week for 8 weeks **if employer's account sufficient**

Waiting Period

Majority Plan	Minority Plan
Any two weeks in previous 13, but not more than 5 in year	Three weeks **after application.**

Duration of Benefits

Majority Plan	Minority Plan
Related to previous wages received. **No relation to employer account.** Normal 16 weeks.	Related to previous weeks of employment. **Limited by amount in employer account.** Normal 8 2/3 to 13 weeks

PART VII

APPENDIX A

to

Majority Report to the Governor and the Legislature of the State of New Jersey by the Commission on Social Security Appointed in Pursuance of Joint Resolution No. 7, as Amended by Joint Resolution No. 17 of the 1935 Legislative Session—Recommending An Unemployment Compensation Plan

STATEMENTS FROM STATE REPORTS AND BY AUTHORITIES

Michigan—Second Report of the State Emergency Welfare Relief Commission. A survey of Michigan's Relief and Unemployment Problem. By William Haber and Paul L. Stanchfield. 1936. pp. 172 and 174.

"The following advantages are claimed for the insurance (pooled fund) type of plan:

(1) It recognizes unemployment as a general social responsibility of industry as a whole, which can be met only by dividing the burden among all industries.

(2) It emphasizes actual protection rather than hypothetical prevention of unemployment. Recognizing that individual employers cannot prevent all unemployment, it marshalls the combined resources of all employers (and all employed persons if an employee's contribution is included) in order to protect the greatest possible number of workers.

(3) It permits more adequate benefits and a longer duration of benefit.

(4) Its greater financial adequacy will make it more effective in reducing the need for unemployment relief of the present type. It may also stabilize industry by spreading the individual losses which result from technological changes, changes, in consumers' habits, inflation or deflation, and other elements in business maladjustment.

(5) The insurance method is the best way of building reserves in good times for use in periods of severe unemployment. (The individual reserves plan reduces the rate of contribution in good times and requires increased contributions at periods when they represent the heaviest financial burden.)

(6) Incentives for stabilization by individual employers can be incorporated in a pooled fund plan as well as in the individual reserves type. . . ."

Pooled Fund Recommended

"In order to provide the maximum of financial stability and sharing of risk among contributors, it is strongly recommended that Michigan adopt an unemployment compensation plan calling for a state-wide pooled fund rather than individual employer reserves."

* * *

Massachusetts . . . House No. 386. Report of the Special Commission appointed to make an Investigation of Unemployment Insurance, Reserves and Benefits. Nov. 30, 1934. p. 12.

"After a careful consideration of the two principal systems and of their underlying philosophies, we believe Unemployment Insurance to be the more sound plan. It is proper here to mention some of the serious defects in the reserve plan. It does not afford security to the very ones for whom we are seeking security. Very likely just those employees who need benefits would be the ones to lose them. Their only guaranty of payment is the financial security of their employer's fund. An employer in a stable business would soon accumulate the required reserve, and there would be little demand on his fund, while an employer whose operation is subject to fluctuations, very often unforeseen and beyond his control, would never be able to accumulate an adequate reserve, and his fund would disappear in a few payments to 'first comers.' This may often mean that the best workers, who are usually the last to be 'laid off,' will receive no compensation. . . .

"On the other hand, with unemployment insurance we have a fair distribution of the risks and of the cost. This distribution, together with a state-wide pooling of funds, which we believe to be an essential part of the system, is the soundest way of making the fund financially secure and of guaranteeing an adequate reservoir from which those unemployed through no fault of their own may draw benefits which will be far more adequate than would be possible under any individual reserve plan."

* * *

The New Hampshire Commission on Unemployment Reserves. Herman Feldman, Chairman. A Proposed Unemployment Insurance Measure for New Hampshire. 1934. pp. 23-24.

"A company which looks at the problem narrowly might raise the objection that under a pooled plan the efficient employer may be paying part of the cost of unemployment caused by the less efficient. This is to misunderstand the industry-wide effects which at least certain types of efficiency cause. For efficiency is often the result of technological advances or style changes which, though profitable for a particular concern, may be disastrous for every other in the trade, and the cause of widespread displacement of employees in the industry as a whole.

"Moreover, the insistence on a purely individual reserve by any company would involve, under present conditions, an unwarranted confidence in its ability to protect its own future. The risks of business are so great that a concern which feels itself extremely strong now may, a few years later, find itself in a serious condition. At that time it may not be able to take care of its employees within the terms of the established benefit scale. It would need some support from the premiums contributed by other concerns participating in a plan having the insurance basis of at least a partial pooling of contributions. . . .

"A broad and forward-looking point of view on the subject of unemployment insurance must therefore take into account the normal business risks which at this moment may not be on the horizon, and will support the pooled basis of premiums which the proposed plan provides."

* * *

Court of Appeals—State of New York. Economic Brief for Respondents. March 19, 1936. pp. 78 and 79.

"B. Additional Advantages of a Pooled Fund on a Wide Base, with Uniform Contributions.

1. A pool has a broad, sound **economic base.** Inasmuch as the causes of unemployment are so numerous and diverse, only large-scale treatment is effective. . . .

2. A pool has a broad, sound **financial base.** Shifting conditions, with attendant results on unemployment, make the "blue-chip" business of yesterday the declining business of today; e. g., Pennsylvania anthracite, steam railroads. . . .

3. The pool **lasts longer** and is **more mobile** than a fund collected on any other basis. Combining the contributions of all employers and all industries secures the advantage of the law of averages on both the actuarial and financial side. . . .

4. The pooled fund is much simpler and thus **more economical** to administer than other types of fund. . . .

5. The pool **protects** adequately the **interests of workers transferring** from employer to employer or from industry to industry. Under other insurance methods direct penalty is imposed on a worker covered by an employer or industry fund when he transfers from one which is strong financially to one which is weak.

6. The pooled fund procedure is the most equitable for financing the cost of maintaining the labor reserve. . . ."

* * *

Report of The Ohio Commission on Unemployment Insurance. Wm. M. Leiserson, Chairman. 1932. pp. 58 and 59.

"3. An Insurance Fund, not Individual Reserves.

"The same considerations, in our judgment, condemn the proposal advocated in some states that there be substituted for the principle of insurance a system of compulsory reserves, to be kept separately by each employer or by the state in a fund with separate accounts for each employer. . . . The reserves of each employer would be locked up, so to speak, and the amount that each employer could afford to set aside in this way would be too small to provide anything like adequate benefits. . . . People with the same earning power working for different employers would have varying degrees of protection, and the protection to none would be adequate. Therefore, the burden of maintaining the able-bodied unemployed would still have to be borne by the public and the taxpayers, and the essential need presented by distress from unemployment would not be met."

* * *

Report and Recommendations of the Unemployment Insurance Commission of the State of Oregon. E. J. Stack, Chairman. 1935. p. 85.

"Whether insurance should be provided on a state-wide pooled basis, industrial basis, or plant basis is a question of fact in the relative fluctuations of the various industries and plants in relation to conditions of prosperity and depression. Of the more important of the Oregon industries, lumber, construction, canning and preserving, no one of them withstood the depression as well or better than all industries combined. In terms of workers employed, all industries dropped to 58.3 per cent of the 1929 level in 1932 and stood at 58.9 in 1933, while lumber dropped to 34.7 in 1932 and stood at 40.0 in 1933, construction which was magnified into a relief industry dropped to 71.9 in 1933, with buildings in Portland down to 34.1 and buildings in Oregon outside of Portland down to 24.4, and canning and preserving dropped to 58.8 as a low point in 1932 and stood at 63.7 in 1933. . . .

"Bearing in mind the importance of lumber, construction, canning and preserving as against the remaining industries of the state, and that these industries suffer as much or more from adverse business conditions as the remaining industries, but that the remaining industries are too small separately to constitute an insurable risk, and bearing in mind that the small plants within all industries combined and within the more important industries mentioned fared better in the depression than the large size plants, but that the small plants separately are too small to constitute an insurable risk, the Unemployment Insurance Commission recommends against separate funds and in favor of a **state-wide fund.**"

* * *

Rhode Island Unemployment Insurance Fund Commission. 1936. pp. 26 and 28.

"Organized labor is definitely committed in favor of the pooled fund. Their objections to company funds are as follows: (1) they feel that these are essentially a company union device, in so far as they tie the employees closer to the company, and (2) an inherent fear that many workers will under such a system fail to get benefits when unemployed, because the fund of their particular employer may become exhausted. . . .

"A final objection to the separate plant funds is that obviously, such funds cannot have the advantages of average exposure which is fundamental to the principle of insurance. In times of crises many individual plants will doubtless suffer far more than the average, or may collapse entirely, and deprive their employees of much of the protection an unemployment compensation plan should afford."

* * *

Opinions of Experts in Social Insurance

Douglas, Paul H. Standards of Unemployment Insurance. 1933. p. 168.

"As a matter of fact it is highly improbable that a system of separate employer reserves could survive a depression of any magnitude. For when the workers in the hard-pressed heavy industries find that their benefits are being slashed at the very time that many concerns have large surplus reserves which relatively speaking are not being touched, there will then be, in all probability, such a great popular demand for a pooling of reserves to meet the widespread social emergency that sooner or later the individual compartments will be torn away and a common fund created to cope with the common problem. And if such is the likelihood that a system of separate reserves will in a time of stress give way to a central pooled reserve, would it not be far better to adopt from the very beginning the method which seems ultimately and deservedly destined to become predominant?"

* * *

Epstein, Abraham. Executive Secretary, American Association for Social Security. Author of The Problem of Old Age Pensions in Industry, 1926; Challenge of the Aged, 1928, and other books and articles on social insurance.
Insecurity—A Challenge to America. 1936. pp. 311 and 314.

"There is no need to reemphasize here that unemployment is a result of forces which neither a single corporation nor even a group of industries can control. Any parallel between unemployment prevention and accident prevention is puerile. The two have very little in common. By applied effort and expense most corporations can reduce their accident hazards to a minimum. But such efforts and expenditures are of little avail in stabilizing industries struggling against weather, fashions and other uncontrollable social forces.

". . . the introduction of unemployment reserves instead of compulsory unemployment insurance, such as is in operation in Great Britain, involves not compromise but a surrender of every important principle of social insurance and the acceptance of an entirely unrealistic and erroneous conception of the causes of unemployment."

* * *

Rubinow, Isaac M. President, Casualty Actuarial Society, 1914-1916; Chairman, Committee on Research of the Ohio Commission on Unemployment Insurance, 1932. Author of Social Insurance, 1913, and many articles on unemployment and social insurance.
Quest for Security. 1934. p. 453.

"I believe that the primary purpose is alleviation of the distress of the unemployed, that whatever indirect effect the unemployment insurance system may have towards stabilization of industrial life, though substantial, is incidental. I believe, therefore, in a general insurance fund in which all the establishments are insured, with the maximum assurance of the benefits which comes from wide distribution of risks."

Law and Contemporary Problems, January, 1936. p. 67.

"The prima facie case for the state pool is almost an ironclad and unassailable one. We are dealing with the proposal for insurance of a large number of individuals against the possible hazard of unemployment. Obviously in any insurance scheme the larger the exposure the nearer may one come to an appraisal of the average risk, if any appraisal be possible. If the work can be done by one fund, why have two or more? As we are not dealing here with a branch of the commercial insurance business, there can be no discussion of the right of competition, competitive profits, etc. The economy of a united insurance mechanism must be obvious. It is stated that an insurance fund, like every other business undertaking, may become so large as to be unwieldy. That might serve (and has been used) as an argument against one indivisible **national** fund, but so long as we must have at least forty-eight state funds, the danger of excessive size is obviously dispensed with."

* * *

Report of the Social Security Committee of the City Club of Chicago. William G. Loye, Chairman. Paul A. Douglas and John A. Lapp on Board of Governors. 1935. pp. 9-10.

"Since the amount of unemployment varies greatly from industry to industry and from plant to plant, and is particularly heavy during periods of depression in the so-called capital-goods industries which produce iron and steel, machinery, etc., the reserves of these plants will, unless pooled with the others, be rather quickly exhausted at such times, and in consequence the benefits of workers laid off from those plants will have to be reduced. At the same time, the reserves in the plants producing consumers goods, where unemployment is much lower, will be comparatively high, and full benefits can be maintained for them. Without pooling, we will thus have a great inequality of benefits as between workers who are equally innocent.

"This Committee recommends the Pooled Fund. We doubt whether the plan used in Wisconsin would survive a major depression. Unemployed workers suffering disastrous cuts in their benefits, merely because they had the misfortune to be employed in a capital-goods industry, would inevitably make demands for revision of the law, which could in a spirit of humanity scarcely be resisted. . . .

"We strongly urge, therefore, that the Illinois system be based upon the idea of a pooled fund and that we do not make the mistake of toying with the idea of plant reserves."

British Opinion

Beveridge, W. H. Director, London School of Economics and Political Science; first Chairman, Employment Exchange Commission; Chairman, Unemployment Insurance Statutory Committee, 1934; author of many books and periodical articles on unemployment.
Unemployment—a Problem of Industry. 1930. pp. 291-292.

"At the height of the post-war reaction against the State, from 1920 to 1922, the possibilities of Section 18 of the Act of 1920 providing for special schemes were fully canvassed. There was much talk of "unemployment insurance by industries," and in February, 1922, the Minister of Labour by circular invited associations of employers and workpeople in all industries to consider the desirability of special schemes. The results were negative. In November, 1920, the general scheme had already come into operation; in the catastrophic depression of trade which followed at once, Section 18 was suspended, lest all industries with low unemployment should seek to escape from paying for the others. When the embargo was lifted, employers and workpeople had got used to the general scheme, and insurance by industries, in spite of loud backing by professional critics of State action, proved to be a horse that would not run. Only two special schemes—for banking and for insurance—covering now together about 120,000 insured persons, were established. Otherwise Section 18 remained a dead letter, until it was repealed in the Act of 1927."

* * *

British Opinion

Royal Commission on Unemployment Insurance. Final report. 1932. p. 178.

". . . The main argument is that to which the Blanesburgh Committee called attention—the interdependence of all forms of economic activity, and the fact that a falling off of demand in any one industry must call forth actions and reactions throughout the whole system. The logical issue of that consideration is the complete pooling of risks and resources. It is nowhere possible to draw a firm line round a particular area of industry in such a way as to provide that the properly insurable risks fall within the boundary, while beyond it lies the area either of quite negligible risk or of risks so great as to be uninsurable. Ultimately every service in the community, productive, commercial, administrative, educational, and every other, shares in the prosperity or adversity of industry, and is dependent more or less directly thereon. It is suggested, therefore, that every one of these may reasonably be required to take its part in the system of unemployment insurance, to contribute to the common fund from which fluctuations in employment are met, and to have the right to make a claim upon it."

PART VIII

APPENDIX B

To Majority Report

Summary of the Legal Brief Presented on Behalf of the State of New York to the United States Supreme Court and Upheld by Chief Justice Hughes and His Associates in Considering the New York State Unemployment Compensation Act

Argument—

I. The adoption of an insurance plan to mitigate the economic and social evils of involuntary unemployment is a reasonable and proper means of accomplishing a legitimate legislative purpose

A. The problem of unemployment is a matter of grave public concern and the objective of the act—to mitigate the burden of such unemployment—is a proper public purpose and appropriate for State legislative action

B. The unemployment insurance plan adopted by the New York Legislature is a fair and reasonable method of meeting some of the problems of large scale industrial unemployment

C. A wealth of experience confirms the conclusion that a State plan of unemployment insurance is a reasonable measure

II. The power of the State to impose the cost upon a general group or class, whose activities are reasonably related to the conditions sought to be relieved, is well established

III. The pooling of receipts in a single fund for the payment of unemployment insurance benefits is not in violation of any provision of the Constitution. The case of Railroad Retirement Board v. Alton Railroad (295 U. S. 330) not only is clearly distinguishable from the instant case but actually points to the validity of the present Act

A. The pooling provisions of the act are fair and reasonable and are not in violation of any provision of the Constitution

B. Railroad Retirement Board v. Alton Railroad (295 U. S. 330) not only is clearly distinguishable, but points to the validity of the present act

IV. The New York Unemployment Insurance Law discloses no other feature not within the requirements of the Federal Constitution

A. The classification of employers is fair and reasonable

B. Benefits

C. The absence of a "means test"

D. Freedom of contract

E. Delegation of powers and affiliation with Federal Social Security Act

I

The adoption of an insurance plan to mitigate the economic and social evils of involuntary unemployment is a reasonable and proper means of accomplishing a legitimate legislative purpose.

With particular reference to certain features of this plan it will be shown:

II

The use of the sovereign power of the State to impose the cost upon a general group or class, whose activities are reasonably related to the conditions sought to be relieved, is well established.

III

The pooling of receipts in a single fund for the payment of unemployment insurance benefits is not in violation of any provisions of the Constitution. The case of Railroad Retirement Board v. Alton Railroad Co. (295 U. S. 330) not only is clearly distinguishable from the instant case, but actually points to the validity of the present act.

IV

The New York Unemployment Insurance Law discloses no other feature not within the requirements of the Federal Constitution.

POINT I

THE ADOPTION OF AN INSURANCE PLAN TO MITIGATE THE ECONOMIC AND SOCIAL EVILS OF INVOLUNTARY UNEMPLOYMENT IS A REASONABLE AND PROPER MEANS OF ACCOMPLISHING A LEGITIMATE LEGISLATIVE PURPOSE.

A. The problem of unemployment is a matter of grave public concern and the objective of the act—to mitigate the burdens of such unemployment—is a proper public purpose and appropriate for State legislative action.

The nature and extent of industrial unemployment as it exists today do not require detailed restatement here. A widespread and growing burden of involuntary unemployment has been characteristic of industrial and commercial life in the United States as in all western countries. It has its roots in the irregularity of industrial activity and growth and the number of persons affected has increased from decade to decade as our economic life has become more complex. Even in prosperous times an increasingly substantial volume of unemployment—constituting a permanent pool of idle labor—persists. In the inevitable periods of business depression, when unemployment approaches a climax, its volume reaches staggering proportions.

A glance at the material collected in the Economic Brief is sufficient to drive home the significance of the unemployment problem. In non-agricultural industry as a whole since 1920, according to

President Hoover's Committee on Recent Economic Changes, unemployment in the United States never dropped below a minimum average estimated at 1,400,000 for the year 1920, reaching an average of 3,500,000 in the recovery year 1922. For the more recent period, the figures of the Committee on Economic Security show an increase of those unemployed to approximately 4,700,000, or more than 12 per cent, in 1930; 9,000,000, or more than 23 per cent, in 1931; 13,000,000, or nearly 35 per cent, in 1932; 12,800,000, or over 33 per cent, in 1933. At the height of the depression—the first quarter of 1933—the number of unemployed has been calculated at over 15,000,000. Even in 1935—with industrial production returning to normal—unemployment was still estimated at an average for the year of 11,400,000.

In New York, owing to the advanced degree of industrial development in this State, unemployment has been proportionately even greater than in the country as a whole. During the years 1930 to 1933, for instance, the ratio of unemployed among the bulk of employments covered by the act averaged 29.5 per cent, against 27.5 per cent for the country.

As the burden of unemployment has come to weigh more and more heavily upon all groups, classes and localities it has brought with it a train of pressing, even menacing, problems. Foremost among these are the social consequences of large scale, sustained unemployment. Numerous investigations have established the fact that the income of a substantial part of wage earners is inadequate to maintain even minimum standards of living. Employees are thus unable, as a rule, to set aside from their current earnings sums sufficient to tide them over periods when income has been cut off through protracted absence of employment. Unemployment thus quickly leads to destitution, loss of morale, ill health, vice and crime. Without pursuing the matter further it is sufficient to say that no government can long ignore these social effects of unemployment upon any substantial number of its citizens, for chronic unemployment on a widespread scale undermines the political vitality of the state and threatens the stability of the form of government itself.

There are other aspects of the unemployment problem which it is unnecessary to dwell upon at any length. For one thing unemployment throws upon the government, particularly in periods of depression, an alarming relief burden. Further, the lack of purchasing power among the unemployed reacts upon business conditions and, especially in periods of declining prosperity, contributes to the creation of still further unemployment.

B. The unemployment insurance plan adopted by the New York Legislature is a fair and reasonable method of meeting some of the problems of large scale industrial unemployment.

The New York Legislature found that a system of unemployment compensation would act as a partial solution of the unemployment problem just outlined.

The existence of facts which support the findings of the Legislature and the validity of its action, as this court has often held, must be presumed in the absence of strong proof of their nonexistence. The record of these cases is barren even of allegations of fact, let alone proof of fact, nor are there facts of which this court must take judicial notice, tending to invalidate the legislative judgment. It is submitted, therefore, that this is a proper case for application of the presumption of reasonableness. On the basis of all the information before it, the Legislature found that

> "Economic insecurity due to unemployment is a serious menace to the health, welfare and morals of the people of this State. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. After searching examination of the effects of widespread unemployment within the State, the joint legislative committee on unemployment appointed pursuant to a joint resolution adopted April ninth, nineteen hundred thirty-one, has reported to the Legislature that 'the problem of unemployment can better be met by the so-called compulsory unemployment insurance plan than it is now handled by the barren actualities of poor relief assistance backed by compulsory contribution through taxation. Once the facts are apprehended this conclusion is precipitated with the certainty of a chemical reaction.' Taking into account the report of its own committee, together with facts tending to support it which are matters of common knowledge, the Legislature therefore declares that in its considered judgment the public good and the well-being of the wage earners of this State require the enactment of this measure for the compulsory setting aside of financial reserves for the benefit of persons unemployed through no fault of their own."

The unemployment insurance plan operates by building up a central reserve fund, out of which benefits are paid to those individuals who have been employed for a substantial period of time during the previous year or two years but who have become temporarily unable to find work through maladjustments in the economic system. With minor exceptions, benefits are payable regardless of the reason for the unemployment. But no benefits are payable except to those who are ready, able and willing to work if the opportunity is presented. In order to insure that the plan is thus limited to involuntary unemployment all claimants are required to register at designated employment offices and must accept suitable employment when offered, on pain of sacrificing benefits. The exceptions, of which appellants seek to make much, are both reasonable and necessary, and the studied attempt to indicate that the act will compensate the loafer (Chamberlin Brief, pp. 6-7, 22, 66) is wholly unjustified.

Benefits paid amount to only 50 per cent of the normal weekly wage of the beneficiary. In no event are benefits greater than $15 a week. These limitations are additional assurance against malingering.

No benefits are paid until a waiting period of three weeks after filing notice of unemployment has elapsed. In this way employees who quickly find or are offered other places in the industrial structure are not given benefits and the fund is conserved against multiple small and largely unnecessary claims. Furthermore, benefits are payable only for a limited period, not more than sixteen weeks. This eliminates from the plan those who remain permanently or semi-permanently unemployed.

The unemployment insurance plan, in short, is designed to cover only a specific period of involuntary unemployment during which the beneficiary must be seeking new employment. These limitations, however, do not mean that the plan is not of substantial assistance to the greater share of the unemployed covered by its provisions. On the contrary, the composition of the unemployed is constantly changing and the duration of individual unemployment in ordinary circumstances is relatively short (Ec. Br. pp. 11-13, 25). Hence, most of those eligible to receive unemployment insurance benefits will be tided over a period sufficiently long to make ordinary readjustment (Ec. Br. p. 124.) Thus the plan concentrates its effect on the most vital sector of the unemployment front: conserving the economic position and morale of the permanent labor forces of industry.

Primarily this unemployment insurance system is justified not only as direct relief of the destitute, but as a means of preventing, in part at least, the reduction of large numbers of citizens from their normal state of comparative poverty to that state of complete pauperism which so frequently accompanies the loss of earning power caused by unemployment. Under present conditions, loss of employment causes the unemployed first to become a burden upon relatives, friends, neighbors, and local tradesmen, and eventually, when such informal sources of assistance have been exhausted, to fall at last upon the public relief rolls. In the first steps of this progression the burden of supporting the unemployed falls directly upon that portion of the still employed population which is probably least able to bear it successfully without a serious lowering of its own living standards and without grave threats to its continued well-being. More important, before the unemployed worker can find sustenance through public relief administration, he must, in most cases, have become completely destitute, and have sacrificed whatever possessions he may have been able to acquire during prior periods of employment. This disruption of accustomed ways of living leads to demoralization and conduces to the creation of those conditions of abject poverty and misery which leading students of the day have described as one of the most fertile causes of vice, crime and social ill-health (Ec. Br. pp. 52-58).

Furnishing of support to the unemployed, in the form of direct relief, has come to be recognized as one of the major obligations of civilized governments (see Ec. Br. pp. 28-43). Yet it is widely believed that the granting of relief, though necessary in order to avoid actual physical suffering and the threat of unrest, is an imperfect social device. The creation of a system of unemployment insurance is not calculated to and will not completely remove the necessity for the dispensation of public relief in ways to which we are now accustomed. It should, however, substantially eliminate a large number of persons from the relief rolls and will substitute for demoralizing direct relief a temporary cash income, paid as a matter of right, which will avoid the dislocations that are now typical. In this way the State may hope to develop a safeguard against pauperism and its consequences, instead of attempting to conquer them after they have already made their appearance. Thus, the unemployment insurance law is, in keeping with the modern tradition, a preventive measure, rather than a cure.

Other considerations which support a system of unemployment insurance should not be ignored. In the first place, it budgets the cost of relief over fluctuating periods of prosperity and depression; instead of throwing the burden of greater increase in relief costs upon the community at times of economic crisis, the insurance plan permits accumulation of funds in boom times, when funds are most readily collected, for use in times of business recession, when funds are most necessary.

Furthermore, the system maintains consistency of purchasing power within a community by building up resources in periods of employment to offset the loss of wages in periods of depression. The unemployment benefits supplement the worker's income at the time most necessary, when his usual earnings are cut off. Thus the tempo of depression is not quickened as various portions of the population withdraw from the consumer market and thereby lessen the demand for goods produced by others who are still employed. Appellants' argument that the unemployment insurance system does nothing to prevent unemployment (Chamberlin Br. pp. 9, 13; Associated Industries Br. pp. 41-2) overlooks entirely this significant feature of the plan. It should be added that, as the Mountain Timber case demonstrates, compensation to workers for loss of earnings, quite aside from issues of prevention, is in and of itself a sufficient constitutional basis for the legislation.

Other advantages of an unemployment insurance plan—such as the facilitation of technological changes, the increased mobility of labor, the absence of competition with private industry which is a feature of work relief—are set forth in the Economic Brief (pp. 111-126).

C. A wealth of experience confirms the conclusion that a State plan of unemployment insurance is a reasonable measure.

A survey of unemployment insurance throughout the world reveals not only that the plan has been widely tested, but that it has become increasingly accepted by industrialized countries as an important contribution toward solution of the unemployment problem.

The first compulsory unemployment insurance law was instituted by Great Britain as long ago as 1911. At first applicable to only six industries, the plan has now been extended until it covers nearly fifteen million persons, virtually the entire wage earning population of Great Britain and Northern Ireland. In 1927 Germany instituted a similar system which now covers over thirteen million workers. All together ten nations—Australia (Queensland), Austria, Bulgaria, Germany, Great Britain and Northern Ireland, Irish Free State, Italy, Poland, Switzerland (13 Cantons) and Yugoslavia—now operate some form of compulsory unemployment insurance (Appendix IV, Ec. Br. p. 170).

POINT II

THE POWER OF THE STATE TO IMPOSE THE COST UPON A GENERAL GROUP OR CLASS, WHOSE ACTIVITIES ARE REASONABLY RELATED TO THE CONDITIONS SOUGHT TO BE RELIEVED, IS WELL ESTABLISHED.

The problem of unemployment which confronts us today was unknown to other forms of economic organization. Our present industrial system has resulted in vast increases in the production of goods, in greatly improved standards of living, in numerous other benefits. But it has also brought with it, as one of its most ominous consequences, the problem of aggravated unemployment.

Present-day unemployment is an inevitable by-product of our industrial structure. As the Economic Brief demonstrates, the chief causes of unemployment are the seasonal variations in industry, the inevitable swing of the business cycle through periods of boom and depression, the fundamental technological changes that are constantly taking place in the industrial structure, the migration of plants and even industries from one section of the country to another, the rise and fall of individual concerns (Ec. Br. pp. 60-93). All these major sources of unemployment arise directly out of the operation of the industrial system itself; and more particularly, out of the very phases of that system which have most greatly increased its productive capacity.

Appellants have attempted to argue that industry is not "responsible" for unemployment since the major share of unemployment arises from causes over which employers have no control (Chamberlin Br. pp. 51-3, 67-70; Associated Industries Br. pp. 51-5). It is readily admitted that industry does not "create" or "cause" most unemployment in the sense that individual employers or industries are at fault or even that industry as a whole could control the amount of unemployment. The same thing is true of industrial accidents, which employers are often powerless to prevent. Our point is simply the obvious fact, which appellants have ignored, that industry and commerce are responsible for unemployment in the sense that such unemployment is inherent in our modern industrial structure, and that it is the maladjustments in the techniques of specialized large-scale production and distribution which are chiefly responsible for the evil.

Furthermore, not only does widespread unemployment arise directly out of the operation of industry, but industry itself may secure certain very definite advantages through such unemployment. For one thing, a business enterprise frequently finds itself in a position where profits will be increased or losses decreased by discharging employees and curtailing operations. This occurs on a large scale during periods of business depression. Thus industry stands to gain by complete freedom to cast off employees at any time. The upshot is that industry transfers to the community the burden of maintaining those who have given their services to industry, who have become dependent upon it, but whom industry finds it more profitable to discharge as business conditions change.

More important is the fact that even in times of business prosperity industry finds it necessary to maintain a large reservoir of labor from which it may draw at will to meet its shifting requirements. This feature of the modern industrial system was described in the Preliminary Report of the Joint Legislative Committee on Unemployment to the New York Legislature as follows:

> "Briefly stated there are reserves of labor in every industrial labor force whose function is analogous to the reserves attached to military armies. The industrial reserve serves by standing in waiting, ready to carry the peak of the industrial demand, or to perform promptly an emergency service. In so serving they justify their presence in industry. But unfortunately it frequently happens that the costs of waiting, which in justice should be passed on to the consumer, are put on the casual labor force. They are not paid while they 'stand and wait' but only when they work. Moreover, their numbers are unduly large because the reserve is not pooled for an industry but attached to each of the competing units. Each competitor endeavors to have a sufficient force of workers at hand to fill his maximum need" (N. Y. Leg. Doc. [1932] No. 69, pp. 74-5).

The maintenance of this "industrial reserve army," necessary to the effective operation of industry, is plainly a legitimate cost of industry. Under present relief methods, however, this cost falls directly upon the general taxpaying public.

We must conclude, then, that the present day operation of industry and commerce creates substantial unemployment. This unemployment has given rise to social evils of such significance that it is impossible for the State to ignore them. Surely it is not unreasonable or arbitrary to require industry, through a system of unemployment reserves, to assume part of the initial cost of their abatement. Particularly is this so in view of the fact that, as we shall see, industry is in a position to pass on the greater share, if not all, of this cost to the employee and the consuming public (see infra pp. 33-34, 55).

In this connection it should be emphasized that the unemployment insurance system set up in the act is limited to the relief of those persons whose unemployment may be traced directly to the operation of industry. The act provides, as we have seen, that no employee shall receive benefits who has not been employed for 90 days or more in the preceding year, or 130 days or more in the preceding two years, immediately prior to his unemployment (§ 503-3-c). Further, no employee receives benefits who refuses to accept substantially equivalent employment (§ 506). Finally, the benefits themselves are calculated upon the basis of past employment (§ 503-3-e). Thus, no benefits are paid to individuals who have never been absorbed by industry and who have had no connection, or only a brief connection, with it. The coverage of the act, in other words, is limited to those persons who have once been a part of industry, for whose unemployment industry is directly responsible, and through whose unemployment industry stands to gain.

Finally, it should be emphasized that the incidence of the tax falls upon the employer only in the first instance. As the Economic Brief demonstrates, ultimately the greater share of the cost will be shifted either to wage earners, in the form of lower wages, or to consumers, in the form of higher prices (Ec. Br. pp. 129-134). Thus, in the end the cost will be borne not by industry alone, but by the whole community. This was pointed out by Judge Crane, writing for the majority in the court below:

> "Instead of solely taxing all the people directly, it has passed a law whereby employers are taxed for the help of the unemployed, the sums thus paid being cast upon the public generally through the natural increase in the prices of commodities. Whether relief be under this new law of the Legislature or under the dole system the public at large pays the bill" (271 N. Y. at p. 9).

The significance of this fact was emphasized by Justice Holmes, concurring in the Arizona Employers' Liability Cases:

> "If a business is unsuccessful it means that the public does not care enough for it to make it pay. If it is successful the public pays its expense and something more. It is reasonable that the public should pay the whole cost of producing what it wants and a part of that cost is the pain and multilation incident to production. By throwing that loss upon the employer in the first instance we throw it upon the public in the long run and that is just. If a Legislature should reason in this way and act accordingly it seems to me that it is within constitutional bounds. Erickson v. Preuss, 223 N. Y. 365" (250 U. S. at p. 433).

Thus, reduced to its essential elements, the unemployment compensation scheme embodied in the act before the court uses the device of a tax upon employers as a convenient method of collecting the funds required to maintain the system. In the end, the public pays "the whole cost of producing what it wants".

Where, as here, the expenditure of funds is for a public purpose, and where, as here, there is a reasonably close relationship between the source from which the funds are derived and the occasion for their expenditure, there is no "expropriation of money from one group for the benefit of another" (United States v. Butler, 297 U. S. 1, 4).

POINT III

THE POOLING OF RECEIPTS IN A SINGLE FUND FOR THE PAYMENT OF UNEMPLOYMENT INSURANCE BENEFITS IS NOT IN VIOLATION OF ANY PROVISION OF THE CONSTITUTION. THE CASE OF RAILROAD RETIREMENT BOARD V. ALTON RAILROAD (295 U. S. 330) NOT ONLY IS CLEARLY DISTINGUISHABLE FROM THE INSTANT CASE BUT ACTUALLY POINTS TO THE VALIDITY OF THE PRESENT ACT.

A. The pooling provisions of the act are fair and reasonable and are not in violation of any provision of the Constitution.

B. Railroad Retirement Board v. Alton Railroad (295 U. S. 300) not only is clearly distinguishable, but points to the validity of the present act.

It is therefore evident that nothing in the discussion of the pooled fund in the Alton case militates against the validity of the pooled fund in the present case. The decisive part of the opinion, however, for present purposes, is in its treatment of the Mountain Timber case, which we have quoted above (supra p. 38). The court stated that the pooling involved in the Washington Workmen's Compensation Act was valid because, for aught that appeared, it represented a reasonable effort at fair classification. We have already seen that pooling here represents at least as reasonable an effort at fairness. What would constitute fair and reasonable pooling in workmen's compensation may be unfair or impracticable in unemployment compensation. Every industrial accident occurs in a particular plant or establishment, and the risks are susceptible of relative appraisal. In New York State the premiums for such insurance vary from 9c to $49.91 per $100 of payroll, and it is not likely that employers would accept such enormous disparity of rates unless experience afforded convincing justification of them. These criteria are not presently available in the case of unemployment compensation, particularly if we look beyond the immediate cause and undertake an appraisal of the total causes of the evil.

The pooling principle as applied in the present cases is therefore valid within the four corners of the holding in the Alton case.

POINT IV

THE NEW YORK UNEMPLOYMENT INSURANCE LAW DISCLOSES NO OTHER FEATURE NOT WITHIN THE REQUIREMENTS OF THE FEDERAL CONSTITUTION.

A. The classification of employers is fair and reasonable.

It is submitted, therefore, that the section under discussion is immune against successful attack. Moreover, as was observed by Chief Judge Crane in discussion of this point in the court below: "* * * a full scheme or plan cannot be condemned because the courts may not approve of certain details" (271 N. Y. at 14).

C. The absence of a "means test".

We have already pointed out that the payment of unemployment benefits as a matter of right, rather than only to those already destitute, is of the essence of the plan for preventing that pauperization which typically accompanies unemployment (supra p. 17).

(1) A "means test" in an unemployment insurance system would penalize thrift, placing the worker who has lived improvidently in a better position than one who has lived providently. One well-known authority upon social security, speaking of the "means test", summed up the matter as follows:

> "The last few years have revealed the unsatisfactoriness of this safeguard, especially as a way of providing for the millions who are unemployed through no fault of their own. The self-respecting worker who has accumulated savings can obtain no help until he has exhausted his resources and become a pauper, while his shiftless neighbor who never saved at all obtains assistance as soon as he is unemployed" (Burns, Towards Social Security (1936) p. 140).

(2) A "means test" creates resentment and dissatisfaction, and frequently denies help to those, often the most deserving, who are too proud to beg for charity.

(3) A "means test" invites fraud and perjury by applicants, since the temptation to conceal assets is well-nigh overwhelming.

(4) A "means test" is costly and difficult to administer. In England it was found that application of a "means test" to the payment of so-called transitional benefits (that is, benefits paid after the expiration of the regular unemployment compensation benefits) cut not more than 12 per cent from the payments. No reason has been suggested to think that the percentage of saving would be higher in New York State. Indeed, if the means of the recipient only were considered, rather than the means of his family as well (as was done in England), the percentage would obviously be reduced. Yet it will hardly be claimed that the Constitution requires a citizen to beg for the charity of his family and friends before the State can be permitted to help him.

It seems clear then, that a "means test" would be unnecessary, in that it would save but a small percentage of the total outlay, and would at the same time create evils too serious to be overlooked (see Ec. Br. pp. 114; 121; 124).

(7) The precise argument that appellants make was advanced in the workmen's compensation cases. This court made short shrift of it:

> "It is said that the compensation or pension under this law is not confined to those who are left without means of support. This is true. But is the State powerless to succor the wounded except they be reduced to the last extremity? Is it debarred from compensating an injured man until his own resources are first exhausted? This would be to discriminate against the

thrifty and in favor of the improvident. The power and discretion of the State are not thus circumscribed by the Fourteenth Amendment" (Mountain Timber Co. v. Washington, 243 U. S. 219, 240).

CONCLUSION

The social requirements of the future are demanding that "industrial employment and support in old age must be secured by a species of insurance. The premium for this insurance will be part of the cost of manufacture."

The New York Unemployment Insurance Law relieves some of the demonstrated economic evils of unemployment inherent in our economic and social system; relieves the taxpayers of the added relief burden otherwise incurred; maintains purchasing power when most needed, with resultant stabilizing effects on industry and commerce; and conduces to the public welfare.

The Court of Appeals of New York has applied to this enactment the approach of the philosophy of the humanities, reflected in sound principles of constitutional law. The theory and plan of this law are builded upon the foundation of this court's decisions.

PART IX

MINORITY REPORT FAVORING EMPLOYER RESERVE PLAN

We concur with the other members of the Commission that New Jersey should have an unemployment compensation law. The point of disagreement occurs in the character of the law.

Some of the Commission believe that a law based on State-wide pooling should be enacted. The undersigned feel there should be no pooling of rights in any reserve fund.

A study of old age benefits and unemployment compensation should take into account not only the point of view of the individual who is old or unemployed, but also the financial burdens to be placed on the State. The proper solution of the question must, therefore, consider relief of the burdens of the State, as well as the individual.

It seems to us that although there is a direct relationship between unemployment and relief that, nevertheless, if left to the State of New Jersey, it would be in the interest of the majority of its citizens that unemployment compensation be dealt with as a separate and distinct matter from the so-called ''relief'' problems and with an entirely separate administrative organization. Any plan should therefore provide the means of eliminating the necessity of going on relief of employees temporarily out of work. At the same time, it should not deprive those workers who continuously sell their labor of the opportunity of accumulating for their own use the fruits of that labor, nor should the plan compel this class of employees to pay a tax to be used for the benefit of others, who, willingly or otherwise, find themselves out of employment. The burden of relief should fall broadly on all of the citizens of the State, and the expenses should be borne by all citizens and not by a group selected because of their industrious and continuous employment.

After a careful study of the numerous private plans in operation in the United States, as well as the laws in other States and in various foreign countries, we come to the conclusion that from the viewpoint of constitutionality, financial soundness and fairness to the laboring man, the New Jersey State plan, known as Plan "A", which was submitted at the last public hearing, met the desired objectives.

This Plan in detail is available for action on the part of this or any future Legislature. Under it an incentive is created for the industrious employee. His rights and monies paid in are protected to the fullest extent. Stabilization of employment on the part of the employer is promoted and encouraged. Experience with similar plans has demonstrated beyond question the soundness of the objectives. By reason of the fact that this plan does not provide for Federal government administration and control of the monies and in other particulars, it does not conform to the Federal act.

Recognizing that the Legislature and the Governor may, because of the coercive effect of the 1936 Federal payroll tax amounting to approximately ten million dollars and the possibility that the Federal government may retain this entire amount, think it advisable to conform to the Federal regulations pending a determination of their validity, we offer as our opinion that the best interests of the State, laboring men, and employers would be served by enacting a law having the chief provisions of the Wisconsin unemployment compensation law. A draft of such a law is submitted herewith.

A brief outline of the contributions and benefits under this bill follows:

ANALYSIS OF CONTRIBUTIONS OF MODIFIED WISCONSIN PLAN

Contributions, although placed in the United States Treasury, are credited in individual employer accounts in order to effectuate merit rating from the experience of the stability of employment of individual employers.

Rates:

By Employee: None.

By Employer:

1936 .9%
1937 1.8%
1938 2.7% (2.7% is the Standard Rate)
Thereafter as follows:

Increase:

When reserve percentage of employer is less than 7½%, contributions shall not be less than 2.7%, and shall be more when benefits greater than contributions in last preceding year, the increase (over last preceding rate, or over standard rate, whichever is higher) being ½% of annual defined payroll, but shall never exceed 4%.

Decrease in rates lower than 2.7% only when:

(a) Benefits have been payable throughout preceding year.
(b) Reserve account not less than 5 times largest amount of benefits paid within any 1 of 3 preceding years.
(c) Rate: 1% when reserve is 7½% to 10% of annual defined payroll; 0% when reserve is 10% or more of annual defined payroll.

ANALYSIS OF BENEFITS

Maximum Benefit:

$10.00 if weekly wage is less than $25.
$12.50 if weekly wage exceeds $25 but less than $30.
$15.00 if weekly wage equals or exceeds $30.

Minimum Benefit:

$5.00 per week.

Rate of Benefit:

50% of weekly wage.

Ratio of Benefits:

1 to 4 (13 weeks) when weekly benefit rate is $10 or less, employer pays 1 week of benefit for each 4 weeks of employment.

1 to 5 (10.4 weeks) when weekly benefit is $12.50.

1 to 6 (8 2/3 weeks) when weekly benefit is $15.00.

The ratio of benefits applies to employment within the 52 weeks preceding the close of the employee's most recent week of employment by the employer.

An employer's liability is limited to his account's current resources.

Waiting Period:

3 weeks after application.

This Modified Wisconsin Bill provides for contributions by employers only, and these contributions are placed in the custody of the Federal government, but the monies remain to the credit of the employer's reserve account on the books of the State and those contributions made by a particular employer are available to those of his employees who may be eligible for benefits.

This plan does not violate the basic principles relating to pooling which the majority of the Commission have until recently steadfastly endorsed. The Wisconsin plan received substantial support at the last hearing before the Commission. We believe the report being submitted by other members of the Commission to be in error in its reference to the operation of the Wisconsin law and the statement that were they (the people of Wisconsin) to enact a new law in that State they would enact one similar to the proposed Plan "D". A recent poll taken of 1,000 industrial establishments in Wisconsin resulted in all expressing themselves as satisfied with the practical results of their law and against changing it to a pooling law.

We have a large quantity of data and opinions from reliable Wisconsin sources, including a former Governor, all of which testify to the fact that this law is preferable to a pooling plan, and that it has had the effect of materially stabilizing employment in industry. The principles underlying the Wisconsin law were first put into operation by that State (January 29, 1932), and their successful experience cannot be lightly discarded.

The Wisconsin law differs fundamentally from Plan "D". Plan "D" is a State-wide pooling plan, and the Wisconsin law is not. A pooling plan instead of increasing stabilization of employment will reduce it. The Wisconsin law has increased stabilization. As stated in the report of the other members of the Commission, the employment rate in Wisconsin was 7 per cent above the general average for all States during the bottom of the depression in 1933. No further proof is needed of the stabilizing effect of a law like that in Wisconsin.

We desire to call the Legislature's attention to the fact that *no* unemployment compensation plan can *insure* against unemployment hazards: First, because there is not and cannot be an actuarial basis on which to found the insurance, and secondly, because to attempt to write insurance would be to base such insurance on an unstable moral hazard. Those who urge a general pool fund and attribute to that fund an insurance principle reach an entirely misleading conclusion. Without an actuarial basis there can be no pooling, because there can be no certainty of equality of treatment of the various participants in the pool. The very essence of insurance is just equality of treatment among the insured.

The only actual experience with pool funds for unemployment compensation is that of the various foreign countries, and the record of performance of these convince us that the pool plan does not accomplish either stability of employment or reasonable assurance that money deposited in the pool will be available to the man who produced it when needed to alleviate the results of his unemployment. This was the result in the pooled plan in Great Britain where the government was, in the later years of the operation of the plan, forced to advance from the public treasury vast sums in order that those more lately unemployed should have any of the benefits to which they had contributed over previous years. The arguments that Plan "D" offers *insurance* against unemployment we believe misleading and not founded on fact. The figures used are at best merely estimates and are not substantiated by any reliable data available.

The pool fund will inevitably result in inequality of treatment, which, in turn, will result in unjustly taking money from the industrious and competent worker and paying it to the laggard.

The so-called merit rating of Plan "D" would be theoretical rather than actual, for the rate of contributions is governed by the condition of the State fund. If merit rating is carried to an extent as to assure to the individual employer the full saving from his efforts to stabilize employment, then the unemployment compensation funds are in fact no longer pooled at all, but in effect are kept in separate plant reserves. And thus the supposed increased protection to the average worker claimed by the advocates of the pool plan disappears. Under any pooled law, even the best merit rating system may give the employer who stabilizes his employment a very partial and somewhat uncertain reward for that achievement. Employer reserve accounts, as provided in the Wisconsin plan, on the other hand, really achieve the merit rating aim completely and definitely, by assuring each employer of the full advantage resulting from his efforts to give steadier employment. Employer reserve accounts also have the economic advantage of sound social cost accounting. It requires each industry, enterprise and product to bear the carrying charges (benefits) on its own idle labor. Pool plans increase the evil of unemployment, by tending to lessen the feeling of responsibility of an employer for the steady employment of his men. To attach a merit rating system to a pool plan is to join together two systems diametrically opposed to each other, and one or the other must fail.

There are other features of Plan "D" with which we do not agree. In many instances these features would be required of any plan which conformed to the Federal statute, and so would be required in a Wisconsin plan conforming to the Federal statute. For example, Plan "D" requires payment through employment offices, which we do not believe adapted to the handling of financial transactions, and it sets up a cumbersome system of administrative tribunals. It requires that State monies be deposited in the Federal treasury.

Another objection we find is that provided by Section 4-C of Plan "D", namely, that if an employee is unable to work or is not available for work, he can obtain no unemployment compensation. It would result from this provision that any man, even though he and his employer had contributed for years to the unemployment fund, who became ill during unemployment would receive no benefit whatsoever during the period of his illness. Thus it would occur that the employee who had the double misfortune of being unemployed and being ill would be deprived of all benefits from the contributions which he and his employer had made.

By far the largest number of witnesses appearing before our Commission at the various hearings favored individual reserve and plant reserve systems to the pool plans, and it seems to us compelling that events will demonstrate these opinions to be sound.

Even the supporters of the Federal Plan prophesy many amendments and changes; and even though the Federal act survive the test of constitutionality it will be necessary to make radical changes in any law that New Jersey will now enact. It therefore seems to us to be not only desirable but absolutely necessary for the protection of employees and employers and the State that any act passed at this time carry a clause automatically repealing it in the event the Federal statute is found to be unconstitutional.

At the base of much of the divergence of opinion as to what legislation New Jersey should adopt at the present time lies the question of the constitutionality of the unemployment and old age benefits provisions of the Federal act. Is New Jersey to enact, supervise and administer the system which New Jersey feels best adapted to its needs, or is New Jersey to enact a system of such character and so supervised and administered as the Federal government thinks on the average would be of advantage throughout all the States of the Union whether or not suitable for New Jersey?

At the last meeting of the Commission held on December 2, 1936, immediately after the public hearing, all members of the Commission then present (with the exception of Commissioners Toohey and Murphy), voted to recommend to the Legislature that the constitutional question should be brought to decision as soon as practical by a suit to be instituted by the State of New Jersey in the Supreme Court of the United States. A draft of an act to produce this result is annexed hereto.

We are firmly of the belief and feel that the opinion is shared by the citizens of New Jersey that this State should enact such legislation as may be required to most promptly and effectively protect the working man against the hazards of unemployment and to promote to the fullest possible extent the stability of employment. To that end we subscribe to the recommendations herein contained and respectfully suggest that the Legislature enact into law the modified Wisconsin plan submitted herewith.

Respectfully submitted,

Harry L. Derby,
John C. Barbour,
Frederick Snow Kellogg.

PART X

DRAFT OF BILL TO PROVIDE EMPLOYER RESERVE SYSTEM (MODIFIED WISCONSIN PLAN) OF UNEMPLOYMENT COMPENSATION RECOMMENDED BY MINORITY

AN ACT

To provide unemployment compensation and reserves by raising revenue, making appropriations, establishing administrative agencies, providing penalties, and by other means.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

Section 1. Among the purposes of this act are: (1) to comply with the provisions of titles III and IX of an act of the Congress of the United States commonly known as the Social Security Act, so long as said titles shall remain effective in this State; (2) to aid in stabilizing employment by inducing employers to plan for steady operation; and (3) to furnish a gradual and constructive solution of the unemployment problems.

Sec. 2. Definitions: As used in this act the following words and phrases shall have the meaning defined in this section, unless the context requires that a different meaning be attributed to them.

(a) The word "commission" shall mean the Unemployment Compensation Commission established by this act.

(b) The word "employment" shall mean any personal service for pay, during any week, in which all or the greater part of the person's hours of work (within the continental United States) is or was performed within New Jersey, under any contract of personal service for pay, or contract for hire, express or implied, oral or written, whether such person's contract was directly made with and paid by the employer or through a person in his employ, provided the employer had actual or constructive knowledge of such contract; and each individual engaged by any employer to perform services for pay shall for the purposes of this act be treated as in an "employment" unless and until the employer has satisfied the commission that such individual has been and will continue to be free from the employer's control or direction over the performance of his work both under his contract of service and in fact, and that such work is either outside the usual course of the employer's enterprise or performed outside of all the employer's places of business, and that such individual is customarily engaged in an independently established trade, business, profession or occupation; except that for the purposes of this chapter an "employment" shall not include:

(1) Employment as a farm laborer;

(2) Employment in the personal or domestic service of an employer at his home;

(3) Employment by a governmental unit on an unemployment work relief project, recognized as such by the commission;

(4) Employment as an elected or appointed public officer;

(5) Employment by a governmental unit on an annual salary basis;

(6) Employment as a teacher in a private or public school, college or university for the regular term for which such school, college or university is in session;

(7) Employment of a person who is covered by an unemployment compensation system established directly by an act of Congress;

(8) Employment by railroads engaged in interstate transportation; provided, however, that where such a railroad elects (under such conditions and for such period as the commission may approve) to waive the exclusion otherwise applicable under this subdivision, such exclusion shall thereupon cease to apply to persons employed by such railroad. To the extent to which section 906 of the Federal Social Security Act is effective, persons engaged in interestate commerce shall not be excepted from the provisions of this act; provided, however, that any person so engaged in interstate commerce may waive any exemption which he may constitutionally have, in like manner and with like effect as is in this subsection provided in respect to railroads;

(9) Employment of any person by a corporation, community chest, fund, foundation or association, organized and operated not for profit but exclusively for educational, charitable, religious, scientific or literary purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; provided, however, that where such an employer voluntarily elects to become an employer subject to this act under paragraph (c) of this section, the exclusion otherwise applicable under this subdivision shall thereupon cease to apply to persons employed by such employer;

(10) Employment directly by this State, or by any of its counties, municipalities, officers, departments, agencies, or governmental instrumentalities; also, employment directly by the State Fair during its active duration (including the week before and the week after the Fair); also, employment by the New Jersey National Guard in connection with its summer training camps or for emergencies; also, employment by any State agency for emergency fire fighting;

(11) Employment by the representative of a foreign sovereignty enjoying diplomatic immunity, but this exception shall only apply to the extent to which that diplomatic immunity reaches;

(12) Employment by the United States or any of its instrumentalities and employment by any state other than New Jersey or by any of its instrumentalities.

(c) The word "employer" shall mean any person, partnership, association, corporation, whether domestic or foreign (or legal representative or trustee in bankruptcy, or receiver or trustee of a person, partnership, association, or corporation, or legal representative of a deceased person), who or whose predecessor in interest has or shall have on each of some twenty days during the calendar year 1936, or any subsequent calendar year, each day being in a different calendar week, in employment a total number of individuals who for some portion of the day (whether or not at the same moment of time) number eight or more. All persons employed within New Jersey by an employer in all of his several places of employment within New Jersey shall be included in determining the total number of employees of that employer. An employer who may have become subject to this act shall cease to be subject hereto only upon a written application by him and after a finding by the commission that he has not during the preceding calendar year and is not during the current calendar year an employer of eight or more as above defined. Any employer (of one or more persons in New Jersey) not otherwise subject to this act shall become fully subject hereto upon filing by such employer with the commission of his election to become subject hereto for a period starting January or July first and including at least one year of benefit liability, subject to written approval of such election by the commission.

(d) The word "employer" includes natural persons in employment as defined in this act for an employer as defined in this act, where the employer retains control and determination not only of the results to be accomplished but also of the means and methods to be used in the course of such employment and where the work, labor, or services to be performed by the employee constitute a part of the employer's usual trade, business, profession, or other gainful occupation.

(e) An employee's "weeks of employment" by an employer shall mean all those calendar weeks during each of which the employee has performed any wage-earning services for the employer and during each of which all or the greater part of the employee's wage-earning services for the employer were performed within New Jersey.

(f) "Benefits" shall mean the money allowance payable to an employee as compensation for his wage losses due to unemployment as provided in this chapter.

(g) "Wages" shall mean every form of remuneration received by any individual for personal services, including salaries, commissions, vacation pay, bonuses and the reasonable value of board, rent, housing, lodging, payments in kind, tips, and any other similar advantage received from the employer or directly from employment by him; but there shall not be treated as "wages" the actual (or reasonably estimated average) amount of any required or necessary expenses incurred by an individual on his job.

(h) An employee's "full-time weekly wage" for benefit purposes shall mean the weekly earnings such employee would average from his employment (by the employer in question) if employed at the "hourly rate of earnings" and for the "full-time weekly hours" applicable to such employee.

(1) The applicable "hourly rate of earnings" shall be determined by averaging the employee's actual earnings for at least one hundred hours of employment by the employer, so far as practicable. Such hourly rate of earnings shall be calculated at such reasonable times and in accordance with such suitable rules as the commission may approve.

(2) An employee's "full-time weekly hours" shall mean the maximum standard weekly hours prescribed and effective for the employment in question under any applicable federal law or federal code of fair competition or under any applicable New Jersey law or code specifying lower maximum weekly hours, or under any applicable collective bargaining agreement specifying lower maximum weekly hours. Where there is no law or code or collective bargaining agreement applicable, an employee's "full-time weekly hours" shall be determined as follows: There shall be classified together all those employees usually employed by the employer both at reasonable similar work and for substantially the same weekly hours. There shall be determined the number of weekly hours prevailingly worked by the given class of employees, for each separate week of the preceding calendar year. There shall then be averaged such prevailing weekly hours of all weeks in which such hours were forty or more. The resulting average shall constitute the "full-time weekly hours" applicable to each employee of the given class, for benefit purposes throughout the current calendar year. Where the commission finds that the foregoing method of computation cannot be applied to a given class of an employer's employees, because there was no week in which any employee of such class worked forty hours or more, the commission may by special order prescribe the highest hours worked in any week (but in no case less than thirty hours) as the "full-time weekly hours" applicable for benefit purposes to all employees of the given class.

(i) "Payroll" shall include all wages payable by an employer to his "employees".

(j) "Fund" shall mean the unemployment reserve fund established by this act.

(k) "Employer's account" shall mean the separate unemployment reserve account of an employer with the above fund.

(l) "Reserve percentage" shall for contribution purposes refer to the status of an employer's account, as determined finally by the commission after the close of the most recently completed calendar year. In calculating an employer's net reserve as of December thirty-first, benefits shall be charged against his account only on the date when paid, but his contributions payable for the year shall be credited if duly paid no later than thirty calendar days after the close of such year. The employer's "reserve percentage" shall mean his net reserve as of December thirty-first, stated as a percentage of his "payroll" for such calendar year.

(m) "Administration fund" shall mean the administration fund established.

(n) "Week" shall mean calendar week (starting Sunday and ending Saturday).

(o) Eligibility. An employee shall be deemed "eligible" for benefits for any given week of his partial or total unemployment only when he is not disqualified by any provision of this act from receiving benefits for such week of unemployment.

(p) Partial unemployment. An employee shall be deemed "partially unemployed", with reference to any given employer, in any week of employment by such employer for which he receives wages (from any and all employers, but exclusive of "odd-job" earnings) equalling less than his weekly benefit rate from the given employer.

(q) Total unemployment. An employee shall be deemed "totally unemployed" in any week for which he receives no wages (other than "odd-job" earnings).

(r) An employee's "waiting period" for a given employer shall mean any period of time (for which no benefits are payable by the employer) required of the employee pursuant to this act, as a condition precedent to his receipt of benefits from the given employer's account; provided that no benefits shall be payable to an employee from any employer's account for any waiting period week required of such employee with respect to benefits from a subsequent employer.

(s) Weekly benefit rate. An employee's "weekly benefit rate" from a given employer shall mean the amount determined in accordance with this act.

Sec. 3. Payment of benefits.

(1) Benefits shall be paid to each unemployed and eligible employee from his employer's account, under the conditions and in the amounts stated in (or approved by the commission pursuant to) this act, and at such times, at such places, and in such manner as the commission may from time to time approve or prescribe.

(2) No benefits shall become payable from any employer's account, nor shall any employer's benefit liability begin to accrue under this act, with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required of that employer.

Sec. 4. Eligibility for Benefits.

(1) Availability for Work. No employee shall be deemed eligible for total or partial unemployment benefits for any week if such employee was with due notice called on by his employer or by the employment office to report for work actually available within such week and was physically unable to work, or unavailable for such work; provided, however, that where an employee shall have become unemployed and shall have been notified to report for work as aforesaid and shall have become ill during such period of unemployment and because of such illness is unable to work, and shall satisfy the commission that by reason of such illness is unable to work, such employee shall continue eligible for benefits as though such notice to report for work had not been given to him.

(2) Registration for Work. An employee shall not be deemed eligible for benefits for any week if he has failed without good cause: (a) to give any notice of total unemployment then required by the commission under this act, or (b) to register for work in any other

manner and within any time limit prescribed by commission rules, provided the employee has been so instructed by any employer in question. A copy of the commission's applicable rules shall be furnished by it to each employer, who shall inform his employees of the terms thereof when they become unemployed.

(3) Waiting Period for Total Unemployment Benefits. An employee shall become eligible to receive total unemployment benefits from a given employer's account only after a waiting period, for which no benefits are payable by the employer. The nature and duration of the required waiting period shall in each case be determined as follows:

(a) There shall be counted toward the waiting period required of an employee with respect to a given employer those weeks next following the close of the employee's most recent week of employment by the employer, whether or not the employee obtained other work in such weeks; but there shall not be so counted any week of employment by the given employer, nor any week in which the employee is ineligible for benefits from the given employer's account under subsections (1), (2), (4m), (5), (6) or (9) of this section.

(b) There shall be counted toward an employee's waiting period under this subsection, with respect to a given employer, only those weeks occurring after the employer's benefit liability to the employee (based on at least one "ratio" week of employment) has begun to accrue.

(c) An aggregate of three (but not more than three) waiting period weeks (determined pursuant to paragraphs (a) and (b) of this subsection) shall be required of an employee in any consecutive fifty-two weeks to establish his eligibility for benefits from the given employer's account.

(3m) Waiting Period for Partial unemployment benefits. An employee shall become eligible to receive partial unemployment benefits from a given employer's account only after a waiting period consisting of one week of partial unemployment (for which that employer would otherwise, in the absence of this requirement, be liable to pay partial unemployment benefits to that employee). Not more than one week of partial unemployment shall be required of any employee (with respect to any given employer) in any fifty-two consecutive weeks as a waiting period to establish his eligibility for partial unemployment benefits from that employer.

(4) Modified Eligibility. When the commission by general rule or special order finds that a given class of work cannot customarily and reasonably be performed by employees working at full-time weekly hours, or that part of such work requires that a certain proportion (stated in such rule or order) of employees be regularly employed on a special schedule of lower weekly hours, and whenever three-fourths or more of a given employee's weeks of employment by an employer (occurring after the employer's benefit liability has begun to accrue and within the fifty-two consecutive weeks preceding the close of the employee's most recent week of employment by

the given employer) have been exclusively on such work and have been at less than half the full-time weekly hours applicable to such employment, then: (a) such employee shall not be deemed eligible for benefits from such employer's account for any week of his partial unemployment; and (b) to determine the employee's benefits from the employer for any week of total unemployment, the employee's full-time weekly hours shall be one-half the full-time weekly hours otherwise applicable to such employment; and the minimum weekly benefit rate shall not apply.

(4m) Benefits Barred. An employee shall not be eligible for any benefits based on his past weeks of employment by the given employer:

(a) If he has been discharged by the employer for misconduct connected with his employment; provided, moreover, that such employee shall be deemed ineligible for benefits (from other previous employer accounts) for the week in which such discharge occurred and for the three next following weeks.

(b) If he has left his employment voluntarily without good cause attributable to the employer; provided, moreover, that unless such employee has left to take other employment (whether or not subject to this act) he shall be deemed ineligible for benefits from other previous employer accounts, based on his past weeks of employment.

(c) If he is customarily self-employed, and has been given an aggregate of twenty or less weeks of employment by the given employer, and has worked at his self-employment thirty or more weeks, out of the fifty-two weeks preceding termination of his employment by the given employer, and can at such termination reasonably return to his customary (or other similar) self-employment.

(d) If in such weeks he worked for the employer solely as a caddy (rendering to persons engaged in the game of golf personal services incident to such game).

(e) If he is a student (regularly attending an established school, college or university in the most recent school term) whose employment by the given employer has occurred solely within the customary vacation days or periods of schools, colleges, and universities, or outside of school hours for not more than four hours of any full school day.

(f) If he is employed (while a student regularly attending an established school, college or university) by the educational institution which he is thus attending, or by a separate employer as a formal and accredited part of the regular curriculum of such school, college or university.

(g) If he has been regularly employed and paid by the employer, for at least ten out of the past twelve calendar months (completed prior to the close of the employee's most recent week of employment by the employer), exclusively on a fixed monthly salary basis under which the employer (whether or not he had work available for the employee) paid him a fixed salary of one hundred fifty dollars or more for (and within fifteen days after the close of) each of the ten or more months in question.

(5) Benefits Suspended.

(a) An employee who has left (or partially or totally lost) his employment with an employer because of a strike or other bona fide labor dispute shall not be eligible for benefits from such (or any previous) employer's account for any week in which such strike or other bona fide labor dispute is in active progress in the establishment in which he is or was employed.

(b) An employee shall not be eligible for benefits from a given employer's account for any week in which he is partially or totally unemployed due to an act of God, fire, or other catastrophe, or act of civil or military authority, directly affecting the place in which he was employed by such employer.

(6) Benefits Terminated. A claimant shall no longer be eligible for total unemployment benefits and the liability of his past employers to pay him such benefits based on his past employment shall cease for any period after he has without good cause refused to accept suitable employment when offered to him, or without good cause has failed to apply for suitable employment when notified by the district public employment office. Suitable employment shall mean either employment in his usual employment or other employment for which he is reasonably fitted, regardless of whether it is subject to this act; provided such employment is in the vicinity of his residence or last employment, and gives him wages at least equal to his weekly benefit for total unemployment or provides him work for at least half the number of hours normally worked as full time in such occupation or establishment; and provided further, that whenever in any specific case the commission finds that it is impracticable to apply any of the foregoing standards, the commission may apply any standard reasonably calculated to determine what is suitable employment.

(7) Protection of Labor Standards. Benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(8) Option to Waive Restrictions. Any employer subject to this chapter may at any time, with notice to and written approval by the commission, for any stated period of twenty-six weeks or more waive or modify the application to his employees of any provision denying or limiting benefit payments under this chapter, but solely to permit his account to pay additional benefits under conditions equitable to all his employees. Such waiver or modification may at any time be

terminated, by the employer after due notice to the commission and with its written consent, or by the commission after due notice to the employer if found inequitable to his employees.

(9) Probationary Service Period. An employee shall not be deemed eligible for benefits from a given employer's account until the employee has, after the employer becomes liable for contributions, been employed by such employer either a total of more than four weeks of employment (and on at least twelve working days) or on a monthly salary basis for more than one month. Where the commission finds, as to any exceptional class of employees, such as indentured apprentices, that the fitness of the employee to learn the given type of work cannot reasonably be determined within such four weeks or one month, the commission may by general rule approve such longer probationary service period subject to such restrictions as the commission deems reasonable under the circumstances.

Sec. 5. Amount of Benefits.

(1) Weekly Benefit Rate, for Total Unemployment. Each eligible employee shall be paid benefits from his employer's account for each week of his total unemployment at a rate of fifty per cent (calculated to the nearest multiple of twenty cents) of his full-time weekly wage from such employer, with a minimum weekly benefit rate of five dollars, and with a maximum (subject to the ratio provisions of section six) determined as follows:

(a) If the employee's full-time weekly wage is less than twenty-five dollars, his maximum weekly benefit rate shall be ten dollars;

(b) If the employee's full-time weekly wage equals or exceeds twenty-five dollars, but is less than thirty dollars, his maximum weekly benefit rate shall be twelve and one-half dollars;

(c) If the employee's full-time weekly wage equals or exceeds thirty dollars, his maximum weekly benefit rate shall be fifteen dollars;

(d) In no event shall an employee's weekly benefit rate from a given employer exceed the highest weekly wages he received from the employer for any of the fifty-two weeks preceding the close of his most recent week of employment by the employer.

(2) Partial Unemployment Benefits. Each eligible employee shall be paid from his employer's account sufficient benefits, for each week of his partial unemployment, so that his week's wages (exclusive of "odd-job" earnings) plus his benefits will equal his weekly benefit rate from the employer in question, or will exceed such rate whenever (and so far as) necessary to make his benefits for such week a multiple of the benefit amount then chargeable against one week of employment. But in the special case of an employee partially unemployed in a given week while working for several employers, their benefit liability shall be equitably allocated by the commission, and such employee's wages and benefits combined (from all employers) shall in no event exceed the highest total wages he received (from all employers) for any of the fifty-two weeks preceding the close of the given week.

(3) Odd-Job Earnings. In determining an employee's partial or total unemployment and his benefits for any given calendar week, there shall not be counted his "odd-job" earnings for such week, as determined (pursuant to commission rules) in deciding individual benefit claims; provided, that the term "odd-job" shall in no case apply to work for an employer subject to this chapter.

(4) Aggregate Benefits. The amount of benefits payable to any eligible employee shall be limited also by the benefit liability of his employer's account, as provided in section six and section seven.

Sec. 6. Benefit Liability of Employer's Account.

(1) Ratio Provisions. An employer's account shall be liable for benefits to an employee based on (and in a definite ratio to) how many weeks of employment, of the employee by the employer, have occurred after the probationary service period specified in subsection (9) of section four, and after the employer's benefit liability has begun to accrue, and within the fifty-two weeks preceding the close of the employee's most recent week of employment by the employer, as follows:

(a) One-to-four ratio. When the employee's weekly benefit rate is ten dollars or less, the employer's account shall be liable to pay benefits to the employee in the ratio of one week of benefits to each four weeks of employment thus occurring;

(b) One-to-five ratio. When the employee's weekly benefit rate is twelve and one-half dollars, the employer's account shall be liable to pay benefits to the employee in the ratio of one week of benefits to each five weeks of employment thus occurring;

(c) One-to-six ratio. When the employee's weekly benefit rate is fifteen dollars, the employer's account shall be liable to pay benefits to the employee in the ratio of one week of benefits to each six weeks of employment thus occurring;

(d) As used in this subsection, the phrase "one week of benefits" means benefit dollars equal to the employee's weekly benefit rate, whether such dollars are paid for total or partial unemployment or both. Based on any one "week of employment thus occurring", a fraction of one week of benefits may be paid, namely, the benefit amount chargeable against the given week of employment under the ratio applicable at the time of such benefit payment.

(2) Charging of Benefits. Benefits payable to an employee from a given employer's account shall in each case be charged against the earliest weeks of employment (of that employee by that employer) against which benefits have not previously been charged hereunder to the full money extent permitted by the ratio provisions of this section.

(3) Duration of Employer's Liability. In no case shall an employer's account remain or be liable to pay benefits to an employee for any unemployment occurring more than twenty-six weeks after the close of the employee's most recent week of employment by such employer.

(4) Liability Limited to Account. No employer's account shall at any time be liable to pay benefits beyond the account's current re-

sources (including his contributions then payable but still unpaid under this chapter). Benefits payable from an employer's account for unemployment occurring in a given week shall either all be paid in full or all be reduced at the same proportionate rate, as follows: Whenever the current resources of an employer's account at the close of any week (after setting aside a sum fully covering all benefits potentially payable from such account under pending claims, for unemployment prior to such week) are less than the aggregate benefits apparently payable for unemployment occurring in such week, then all benefits payable for unemployment in such week shall be reduced and paid proportionately, regardless of the minimum weekly benefit rate otherwise applicable. Whenever a week of unemployment benefits is thus paid to an employee at a reduced rate, it shall be charged against his available weeks of employment as if paid at the full rate.

Sec. 7. Liability of Successive Employers.

(1) When an employee is employed by more than one employer within any fifty-two-week period, the payment of benefits due such employee for unemployment shall be made from the successive employer's accounts in inverse order to such successive employments. No previous employer shall pay benefits to an employee for any week in which he is employed by a subsequent employer subject hereto. Only when the last employer is not liable or shall have met or been unable to meet his benefit liability to an employee, and when the employee receives no wages or benefits from his last employer for the given week of unemployment, shall the next previous employer pay any benefits due from him to such employee.

(2) In the case of an employee working for several employers in the same week, the commission shall (pursuant to general rule or special order) allocate equitably to each such employer any benefit liability for partial or total unemployment of such employee under this chapter.

Sec. 8. Notification.

(1) Any claimant of benefits must give notice of his unemployment at the public employment office for the district in which he is or was last employed, within such time and in accordance with such rules as the commission may prescribe. Thereafter he shall give notice of the continuance of his unemployment as frequently and in such manner as the commission may prescribe. But the notification prescribed under this subsection may, as to any case or class of cases, be waived by the commission for good cause (including administrative feasibility), provided the commission finds that no party in interest will be prejudiced by such waiver.

(2) The commission may require from any or each employer notification of the partial or total unemployment of his employees, within such time, in such form, and in accordance with such rules as the commission may prescribe.

(3) Whenever an employee in any given week of employment by an employer is partially unemployed and eligible for benefits from such employer's account, the employer shall initiate the payment of such

benefits, without awaiting a claim by the employee, consistently with any applicable commission rules.

Sec. 9. Settlement of benefit claims.

(1) Filing. Claims for benefits shall be filed pursuant to general commission rules, either at the public employment office for the district or as the commission's rules may otherwise direct; provided that the commission may waive the filing of a claim directly by the employee himself, for benefits from a given employer's account, where due notice of the employee's unemployment is given the employer by the commission or is given the commission by the employer, which notice shall in either of such cases serve as a claim for benefits. The employer from whose account benefits are claimed (whether directly by the employee or through the commission) shall promptly inform the commission in writing of his acceptance or rejection of such claim, together with his reasons therefor.

(2) Initial determination. A representative designated by the commission, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal or to the board of review, which shall make its determinations with respect thereto in accordance with the procedure described in subsection (3) of this section, except that in any case in which the payment or denial of benefits will be determined by the provisions of section four, paragraph five, subsections (a) and (b) of this act, the deputy shall promptly transmit his full finding of fact with respect to those subsections to the board of review, which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that subsection. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. Unless the claimant or any such interested party, within five calendar days after the delivery of such notification, or within seven calendar days after such notification was mailed to his last-known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period prior to the final determination of the board of review, shall be paid only after such determination.

(3) Appeals. Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the board of review, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (5) of this section.

(4) Appeal Tribunals. To hear and decide disputed claims, the commission shall establish one or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of three members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the commission and be paid a fee of not more than twenty dollars per day of active service on such tribunal (plus necessary expenses), and shall serve until replaced by the commission. No person shall participate on behalf of the commission in any case in which he is an interested party. The commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternate, provided due notice of the session has been given to the member and alternate. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

(5) Board of Review. The board of review may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The board of review shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and by the deputy whose decision has been overruled or modified by an appeal tribunal. The board of review may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the board of review shall be heard by a quorum thereof in accordance with the requirements in subsection (3) of this section. The board of review shall promptly notify the interested parties of its findings and decision.

(6) Procedure. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the board of review for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(7) Witness Fees. Witnesses subpœnaed pursuant to this section shall be allowed fees at a rate fixed by the commission. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this act.

(8) Appeal to Courts. Any decision of the board of review in the absence of an appeal therefrom as herein provided shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the board of

review as provided by this act. The board of review shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the board of review and has been designated by it for that purpose, or at the board of review's request, by the attorney-general.

(9) Court of Review. Within ten days after the decision of the board of review has become final, any party aggrieved thereby may secure judicial review thereof as to questions of law by certiorari in the Supreme Court of New Jersey against the Board of Review and any other proper parties. Procedure in such court shall be governed by the law and rules of court governing proceedings in certiorari; provided, however, that said court may by general or special order refer the hearing of any such certiorari proceeding to any justice of said court or to any circuit judge of the State of New Jersey. Any decision by a justice of the court or by a circuit judge may be reviewed by the Supreme Court, and any decision of the Supreme Court may be appealed to the Court of Errors and Appeals. A petition for certiorari shall not act as a supersedeas or stay unless the court or justice directing the issuance of such writ shall so order.

Sec. 10. Modified Procedure.

(a) The Commission may modify the procedure prescribed in section eight of this act for the determination by it or its subordinates of claims for unemployment compensation, provided such modification shall not be of such nature as to deprive any person of a fair hearing.

(b) No employee shall be charged fees of any kind by the commission or its representatives in any proceeding under this act, and any person may be represented before the commissioner or before its representatives by any duly authorized agent. Any employee claiming benefits in any court proceeding may be represented by counsel. No such counsel or agent shall separately or together charge or receive from an employee for such service more than ten per centum of the maximum benefits at issue in such commission or court proceeding, unless the commission or the court as the case may be has first approved a specified higher fee.

Sec. 11. Agreement to contribute by employees void.

(a) No agreement by an employee or by employees to pay any portion of the contributions required under this act from employers shall be valid. No employer shall make a deduction for such purpose from wages. Any employee claiming a violation of this provision may, to recover wage deductions wrongfully made, have recourse to the courts of this State or have recourse to the commission by the method set up in section eight for the settling of disputed claims.

(b) But nothing in this act shall affect the validity of voluntary arrangements heretofore or hereafter entered into whereby employees freely agree to make contributions to a private fund for the purpose of securing unemployment compensation additional to the benefits provided in this act.

Sec. 12. Waiver of Benefit Void. No agreement by an employee to waive his right to benefits or any other rights under this chapter shall be valid.

Sec. 13. Assignment. No claim for benefit under this chapter or under any approved voluntary unemployment benefit plan nor any interest in any unemployment benefit fund or reserve shall be assignable before payment; nor shall any claim for benefit awarded, adjudged, or paid, nor any interest in any unemployment benefit fund or reserve, be subject to be taken for the debts of the party entitled thereto.

Sec. 14. Unemployment Compensation Commission.

(1) Organization. There is hereby created a commission to be known as the Unemployment Compensation Commission of New Jersey. It shall consist of seven members who shall be appointed by the Governor with confirmation by the Senate and who shall serve without salary; provided, however, that their necessary expenses shall be paid. Appointments shall be made without reference to political affiliation. First appointees to the commission shall serve as designated by the Governor at the time of appointment, as follows: one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, one for a term of six years, and one for a term of seven years. At the expiration of initial terms, appointments shall be made for a term of seven years in each case. Any vacancies created by death, resignation or removal shall be filled by appointment for the unexpired portion of the term so vacated.

The Governor may, at any time after a fair public hearing, remove any member of the commission for gross inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office.

(2) Executive Director. The commission shall appoint an executive director who shall be the chief executive and approval officer of the commission and who shall hold office at its pleasure. He shall give his full time to the duties of this office and shall be paid a suitable salary to be fixed by the commission.

It shall be the duty of the executive director to administer this act with the advice of and subject to the approval of the commission; and to that end, the executive director shall have the following duties and powers:

(a) To formulate necessary rules and regulations, subject to approval by the commission.

(b) To appoint and fix the compensation of members of the staff, subject to approval by the commission; such appointments shall be made from Civil Service eligible lists.

(c) To make any reasonable expenditures necessary in the discharge of his functions hereunder as provided for in the budget to be approved annually by the commission, and he is hereby authorized to draw vouchers on the administration fund for the same.

(d) To draw vouchers upon the unemployment compensation fund and the appropriate accounts therein for the payment of benefits.

(e) To delegate to other persons any of the powers conferred upon him by this act, so far as is reasonably necessary.

(3) Divisions. The executive director shall establish such administrative divisions as may be necessary to carry out the purposes of this act, subject to approval of the commission. Among such divisions shall be New Jersey State Employment Service Division created, pursuant to section sixteen of this act. The New Jersey State Employment Service shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commission may find such separation to be impracticable.

(4) Board of Review. The executive director shall appoint from Civil Service eligible lists, subject to approval of the commission, a board of review, consisting of three members whose duties shall be to act as a final appeals board in cases of dispute and to whom shall be delegated the duty of supervising the work of local appeals tribunals to be organized as provided for elsewhere in this act.

(5) Powers and Duties. The commission shall have the following specific powers and duties:

(a) To designate its chairman.

(b) To study the operation of this act and from time to time prepare recommendations to the Governor and Legislature with respect to any improvements which might be desirable.

(c) To make rules and regulations governing its own procedure.

(d) To advise the executive director and other members of the commission staff with particular respect to policies and procedures.

(6) Quorum. Any four commissioners shall constitute a quorum. No vacancies shall impair the right of the remaining commissioners to exercise all of the powers of the commission.

Sec. 15. Administration.

(1) Duties and Powers of the Commission. It shall be the duty of the commission to administer this act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end; provided, that the commission may delegate such power and authority to the executive director subject to their ultimate supervision and control. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this act, which the commission shall prescribe. The commission shall determine its own organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. Not later than the first day of February of each year, the commission shall submit to the Governor a report covering the administration and operation of this act during the preceding calendar year and shall make such recommendations for amendments to this act as the commission deems proper. Such report shall include a balance sheet of the moneys in the fund. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so

inform the Governor and the Legislature, and make recommendations with respect thereto.

(2) Regulations and General and Special Rules. General and special rules not inconsistent with this act or any other law may be adopted, amended, or rescinded by the commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten days after filing with the secretary of state and publication in one or more newspapers of general circulation in this State. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the commission and shall become effective in the manner and at the time prescribed by the commission.

(3) Publication. The commission shall cause to be printed for distribution to the public the text of this act, the commission's regulations and general rules, its annual reports to the Governor, and any other material the commission deems relevant and suitable and shall furnish the same to any person upon application therefor.

(4) Personnel. Subject to other provisions of this act, the commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis from lists of eligible persons prepared by the Civil Service Commission. The commission shall not employ or pay any person who is an officer or committee member of any political party organization. The commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this act, and may in its discretion bond any person handling moneys or signing checks hereunder.

(5) Advisory Councils. The commission shall appoint a State Advisory Council and local advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment, or affiliations, and of such members representing the general public as the commission may designate. Such councils shall aid the commission in formulating policies and discussing problems related to the administration of this act and in assuring impartiality and freedom from political influence in the solution of such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary expenses.

(6) Employment Stabilization. The commission, with the advice and aid of its advisory councils, and through its appropriate divisions, shall take all appropriate steps to promote the re-employment of unemployed workers throughout the State in such ways as may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

(7) Records and Reports. Each employer shall keep true and accurate employment records. Such records shall be open to inspection by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employer any sworn or unsworn reports, with respect to employment of persons employed by it, which the commission deems necessary for the effective administration of this act. Information thus obtained shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the employer's identity, but any claimant at a hearing before an appeal tribunal or the commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the commission who violates any provision of this subsection (7) shall be fined not less than $20 nor more than $200, or imprisoned for not longer than ninety days, or both.

(8) Oaths and Witnesses. In the discharge of the duties imposed by this act, the chairman of an appeal tribunal and any duly authorized representative or member of the commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpœnas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim.

(9) Subpœnas. In case of contumacy by, or refusal to obey a subpœna issued to any person, any court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission or its duly authorized representatives, or the board of review, shall have jurisdiction to issue to such person an order requiring such person to appear before the board of review or a member thereof, a commissioner, the commissioner, or its duly authorized representative, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(10) Protection Against Self-Incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commission or the board of review or in obedience to the subpœna of the commission or any member thereof, the board of review or a member thereof, or any duly authorized representative of the commission in any cause or proceeding before the commission, the board of review or a member thereof, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege

against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(11) State-Federal Co-operation. In the administration of this act, the commission shall co-operate to the fullest extent consistent with the provisions of this act, with the Social Security Board, created by the Social Security Act, approved by the President of the United States August 14, 1935, as amended; shall make such reports, in such form and containing such information as the Social Security Board may from time to time lawfully require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the Social Security Board governing the expenditures of such sums as may be allotted and paid to this State under Title III of the Social Security Act for the purpose of assisting in the administration of this act.

Upon request therefor the commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this act.

Sec. 16. Employment Service.

(1) State Employment Service. The employment bureau of the New Jersey Department of Labor is hereby abolished and its duties and powers transferred to the commission as a division thereof, which shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this act and for the purpose of performing such duties as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for co-operation with the States in the promotion of such system, and for other purposes," approved June 6, 1933 (48 Stat. 113; U. S. C., title 29, sec. 49 (c)), as amended. The said division shall be administered by a full-time salaried director, who shall be charged with the duty, subject to the supervision of the commission and the executive director, to co-operate with any official or agency of the United States having powers or duties under the provisions of the said act of Congress, as amended, and to do and perform all things necessary to secure to this State the benefits of the said act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of Congress, as amended, are hereby accepted by this State, in conformity with section four of said act, and this State will observe and comply with the requirements thereof. The New Jersey State Employment Service division is hereby designated and constituted the agency of this State for the purpose of said act. The commission is directed to appoint the director, other officers, and employees of the New Jersey State Employment Service. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis from lists of eligible persons prepared by the Civil Service Commission.

(2) Financing. All moneys received by this State under the said act of Congress, as amended, shall be paid into the special "employment service account" in the unemployment compensation administration fund, and said moneys are hereby made available to the New Jersey State Employment Service to be expended as provided by this section and by said act of Congress. For the purpose of establishing and maintaining free public employment offices, said division is authorized to enter into agreements with any political subdivision of this State or with any private, nonprofit organization, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the employment service account.

Sec. 17.

(1) This section is intended to be in conformity with the requirements of Titles III and IX of the Federal Social Security Act. If it is not in such conformity it shall not become effective.

(2) The commission shall exempt from the provisions of this act, except sections 3, 4, 7, 10 (b), 12, 13, 14, 17, 22, 23, 24, 25, 26, and 27, any employer or group of employers submitting a plan for unemployment benefits which the commission finds: (a) makes eligible for benefits at least the employees who would be eligible for benefits under the compulsory features of this act; (b) provides that the proportion of the benefits to be financed by the employer or employers will on the whole be equal to or greater than the benefits which would be provided under the compulsory features of this act; and (c) is on the whole as beneficial in all other respects to such employees as the compulsory plan provided in this act.

If under such a plan any contributions are made by employees, the accounts of the plan shall be so kept as to make clear what proportion of the benefits is financed by the employer or employers, and what proportion by the employees. If under such a plan any contributions are made by employees, the commission may require that such employees be represented, by representatives of their own choosing, in the direct administration of such plan, and the commission may take any steps necessary and appropriate to assure such representation to contributing employees.

(2m) In the case of an employer having two or more distinct establishments, the commission may, subject to the limitation of subsection (2) of this section, approve for each establishment a distinct unemployment benefit plan, provided the commission finds that the employer's proposed plans will be on the whole as beneficial to all his employees as would a single plan.

(3) No employer or group of employers exempted under this section shall be permitted to insure the liability to pay benefits or wages in any insurance company; and if such employer or employers enters or enter into an agreement for any form of insurance coverage such action shall automatically operate as a revocation of such exemption.

(3m) No unemployment fund or reserve established pursuant to this section shall at any time be liable to pay administrative charges (to any bank, trustee, or other custodian) connected therewith beyond the available interest earnings (of such fund or reserve) as determined pursuant to general commission rules.

(4) As a condition of granting exemption, the commission may require the employer or group to furnish such security as the commission may deem sufficient to assure payment of all promised benefits, including the setting up of proper reserves. Such reserves and other security and also the manner in which an exempted employer carries out his promises of benefits shall be subject to inspection and investigation by the commission at any reasonable time. If the commission shall deem it necessary it may require an exempted employer to furnish additional security to assure fulfillment of his promises to his employees.

(4m) Any employer exempted under this section may, with the commission's approval and pursuant to its rules, maintain an employer's account in the fund. As security for any plan exempted under this section the commission may permit or require deposits by an employer in the fund, and may accept and hold certificates or other instruments evidencing the deposit of bonds in escrow to collateralize or safeguard the liability of exempted employers hereunder.

(5) If an exempted employer or group of employers fails to furnish security satisfactory to the commission, or fails to fulfill the promises made to employees, or wilfully fails to furnish any reports that the commission may require under this act, or otherwise to comply with the applicable portions of this act and the rules, regulations and orders of the commission pertaining to the administration thereof, the commission may, upon ten days' notice and the opportunity to be heard, revoke the exemption of such employer or group. In such case or in case any exempted employer or group voluntarily terminates or changes the form of his exemption with the commission's written consent, such employer or each of such group of employers shall at once pay into an account in the fund an amount equal to the balance of his contributions (including his contributions payable but unpaid) then standing to the credit of his special fund or reserve or employer's account in the fund. The account of any employer whose exemption has been terminated shall thenceforth be liable to pay to his employees the benefits which may remain or thereafter become due them, as if such employer had not been exempted under this section; and such employer shall thenceforth pay all contributions regularly required under this chapter from nonexempted employers.

(6) Each employer exempted under this section shall be liable to make all contributions, to pay to employees all benefits, to pay all penalties, and otherwise to comply with all the provisions of this act, except as the commission permits otherwise consistently with the purposes and provisions of this act.

(7) Such plan shall provide that in case the employer shall for any reason cease to be subject to this act and has legally terminated the plan with the commission's written consent, the funds which shall have been contributed under such plan shall be retained for a

sufficient period to meet all liability for benefits which may thereafter accrue, and that at the end of such period the proportion then remaining of employee contributions shall be distributed in the manner specified in the plan, and the proportion then remaining of employer contributions shall be paid to the employer who has ceased to be subject to this act.

(8) The rules and regulations for the government of such plan must be submitted to and approved by the commission, and may from time to time be amended by the commission consistently with this act. Neither the authorization of plans nor the commission's approval of a plan under this section, nor any provision nor any application of any plan shall create any vested private right against legislative amendment or repeal of this section and of plans established hereunder. All the rights, privileges, or immunities conferred by this section or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or to repeal this section at any time.

(9) Where an employer submits to the commission, for its approval under this section, any proposed exempted plan (or proposed modification of an exempted plan), the commission may, as a condition precedent to its approval, alter or amend such document; provided that no such amendment by the commission shall become effective until accepted by the employer, as evidenced by his signature of the proposed plan or modification as thus amended.

(10) Promptly after the enactment of any legislative act amending this act, the commission shall notify and inform each exempted employer of the provisions of such amendatory act and of this subsection, so far as practicable within twenty days after the effective date of such act, and (if the commission deems justifiable) by registered mail. Amendments of this act by legislative act shall govern and be deemed fully incorporated in every plan exempted under this section, as of the effective date of such legislative act, except as any exempted employer may (within thirty days after such effective date) file with the commission written notice that he will take no advantage of any such amendment and will operate his exempted plan without change; provided, however, that the exception thus permitted shall not prejudice any legal right the state may have to require full compliance by exempted employers with present or future legislative amendments of this act. Every exempted employer who does not file such contrary notice within said thirty days shall be deemed to have accepted all of such amendments as a part of his exempted plan, and by virtue of such agreement need not complete the correspondingly required revision of his plan until such later date as the commission may by general rule prescribe. The commission shall by such date afford each such employer reasonable notice and opportunity to complete such revision, in such form and in such manner as the commission may by general rule or special order prescribe. If any such employer fails to complete such revision with the commission's written approval by the date prescribed, the commission may terminate his exemption under this section.

(11) Any employer exempted under this section may with the commission's written consent terminate his exemption by substituting therefor direct compliance with this act, subject to such conditions as the commission finds necessary to assure to the employer's employees at least as liberal and beneficial treatment as they would receive if the employer had from the start been directly complying with this act.

Sec. 18. Unemployment Reserve Fund.

(1) For the purpose of carrying out the provisions of this act there is established a fund to be known as the "Unemployment Reserve Fund", to be administered by the State without liability on the part of the State beyond the amount of the fund. This fund shall consist of all contributions and moneys paid into and received by the fund pursuant to this act and of properties and securities acquired by and through the use of moneys belonging to the fund.

(2) A separate account shall be kept by the commission with each employer contributing to said fund, and this separate employer's account shall never be merged with any other account except as provided in subsection (3) of this section.

(3) Whenever two or more employers in the same industry or locality desire to pool their several accounts with the fund, with a view to regularizing their employment by co-operative activity, they may file with the commission a written application to merge their several accounts in a new joint account with the fund. If in its judgment the plan has merit, the commission shall establish such a joint account, provided that the several employers each accept such suitable rules and regulations not inconsistent with the provisions of this act as may be drawn up by the commission with reference to the conduct and dissolution of such joint accounts.

(3m) The fund, and the several employer accounts, shall be merged for investment purposes, subject to annual apportionment of interest earnings to the several accounts, as hereinafter provided.

(4) Consistently with subsection (8) of this section, all contributions payable to the unemployment reserve fund shall be paid to the commission, and shall promptly be deposited by the commission to the credit of the unemployment reserve fund, with such custodians as the commission may from time to time select, who shall hold, release and transfer the fund's cash in a manner approved by the commission. Payments from said fund shall be made upon vouchers or drafts authorized by the commission, in such manner as the commission may from time to time approve or prescribe. Any procedure thus approved or prescribed shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements (for specific appropropriation or other formal release by State officers of State moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund. The commission shall designate a treasurer of the unemployment reserve fund, who shall be either a regular salaried employee of the commission or the State treasurer and shall serve as treasurer of the fund until a successor designated by the commission has assumed the duties of this office. He shall give a

separate bond conditioned upon his faithful performance of these duties which bond shall be deemed likewise conditioned upon the faithful performance by his subordinates of their duties, in such amount as may be fixed by the commission. All premiums upon the bond required pursuant to this section when furnished by an authorized surety company shall (except as otherwise provided in this section) be paid as an administrative cost of the unemployment reserve fund, but shall not exceed one-fourth of one per centum, per annum. of the amount of said bond.

(5) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury of the United States to the credit of the unemployment trust fund established by section 904 of the said Federal Social Security Act.

(6) All net earnings on moneys belonging to the unemployment reserve fund shall be credited thereto and shall at the close of each fiscal year be apportioned by the commission equitably to the several employers' accounts. In determining the fund's net earnings the commission shall include whatever amount has been credited as net earnings to the account of this State in the Federal unemployment trust fund.

(7) When any employer shall cease for any reason to be subject to this act and when in pursuance of the terms of this act the account of that employer has ceased to be liable for benefits to his employees, the commission shall pay (except as otherwise provided in subsection eight of this section) to the employer the balance of that employer's account.

(8) If any employer shall transfer his business in whole or in part or shall otherwise reorganize such business, the successor in interest is hereby required to take over (in proportion to the extent of such transfer, as determined for the purposes of this act by the commission) the resources and liabilities of such employer's account, and to continue without interruption the payment of all contributions and benefits which would have been due for payment under this act in case such employer had continued in business without such transfer or reorganization.

(9) All money held by and received in the fund shall promptly upon such receipt be deposited in (or invested in the obligations of) the "Unemployment Trust Fund" of the United States, in such manner as the secretary of the treasury of the United States (or other authorized custodian of said trust fund) may approve, so long as said trust fund exists and maintains for this State a separate book account (for contribution and benefit purposes) from which no other State or agency can make withdrawals, any other statutory provisions to the contrary notwithstanding. The commission shall requisition from the State's account in the "Unemployment Trust Fund" necessary amounts from time to time, shall hold such amounts consistently with any applicable Federal regulations, and shall make withdrawals therefrom solely for benefits and other unemployment compensation payments under this chapter. While the State has an account in the "Unemployment Trust Fund", no part of the fund

created by this section shall at any time be subject to any New Jersey public deposit insurance charge, other statutory provisions to the contrary notwithstanding. During such time, moreover, the premiums on surety bonds required of the fund's treasurer under this section, and any other expense of administration otherwise payable from the fund's interest earnings, shall be paid from the administration fund.

Sec. 19. Payment of Contributions.

(1) Contributions shall accrue and become payable as of the thirty-first day of December, 1936, by each employer subject to this act and shall be paid thereafter in accordance with this act. Thereafter contributions shall accrue and become payable by any employer on and after the date on which he becomes newly subject to this act.

(2) All contributions required under this act from employers shall be paid to the commission, at such times and in such manner as the commission may prescribe, except as provided otherwise in the case of employers exempted under section seventeen.

Sec. 20. Contributions.

(1) Each employer subject to this act shall, unless exempted under the provisions of this act, regularly make contributions to his account in the fund at the following rates. The standard rate for the calendar year 1936 shall be nine-tenths of one per centum of the 1936 payroll, and shall be payable on or before January 20, 1937; the standard rate for the calendar year 1937 shall be one and eight-tenths per centum of the payroll and shall be payable on or before January 20, 1938; the standard rate for the calendar year 1938 and for each subsequent calendar year shall be two and seven-tenths per centum of the payroll and shall be paid on or before the twentieth day of January next following such calendar year. Each employer shall continue to contribute at said standard rate until he has been potentially liable for benefits throughout the most recently completed calendar year; thereafter his contribution rate for any given calendar year shall be such rate (based on his actual contribution and benefit experience) as the commission finds applicable pursuant to this section.

(2) Whenever an employer (after being potentially liable for benefits throughout the most recently completed calendar year) at the close of the year 1939 or any subsequent calendar year has a reserve percentage of less than seven and one-half per centum, his contribution rate for the next year shall be not less than the standard rate, and shall be more than the standard rate under the following special conditions. If the benefits paid from his account within the calendar year just ended were greater than his contributions for such year, his rate shall be increased (over his last preceding rate, or over the standard rate, whichever is higher) by one-half per centum on his "payroll", but shall never exceed four per centum.

(3) An employer shall under this section be permitted to pay contributions to his account at a rate lower than the then standard rate or lower than his immediately preceding rate only when: (a) benefits have been payable from such account throughout the preceding calendar year, and (b) such account amounts to not less than five

times the largest amount of benefits paid from such account within any one of the three preceding calendar years, and (c) the reserve percentage of such account equals or exceeds seven and one-half per centum.

(4) Whenever an employer (after being potentially liable for benefits throughout the most recently completed calendar year) at the close of 1939 or any subsequent calendar year is entitled under subparagraph three of this section to a reduction in his contribution rate, his reduction shall be such that for the next calendar year he shall pay one per centum of his payroll; when his reserve percentage is ten per centum or more, no contributions shall be required of him for the next ensuing calendar year.

Sec. 21. Unemployment Administration Fund.

To finance the administration of this act and to carry out its provisions and purposes there is established the "Unemployment Administration Fund". This fund shall consist of all contributions and moneys paid to the commission for the administrative fund, including all moneys received for this fund by the State or by the commission from all Federal moneys allotted or apportioned to the State or the commission for the administration of this act; and the commission is hereby directed to make to Federal agencies such reports relating to this act as it deems necessary in this connection. All amounts received by the commission for such fund shall be daily paid over to the treasurer of the commission or the State Treasurer for credit to the Unemployment Administration Fund as the commission may direct and such sums are appropriated to the commission for the administration of this act.

Sec. 22. Record and Audit of Payrolls.

Every employer, whether exempted or not, shall keep a true and accurate employment record of all his employees, whether qualified and eligible to unemployment benefits or not, and of the hours worked for him by each and of the wages paid by him to each employee, and shall furnish to the commission upon demand a sworn statement of the same. Such record shall be open to inspection by the commission or its authorized representatives at any reasonable time.

Sec. 23. Collection of Contributions in Case of Default.

If any employer, whether exempted or not, shall default in any payment required of him under this act, he shall remain liable therefor. If after due notice this payment is not made, it shall be collected by a civil action in the name of the State, the defaulting employer to pay the costs of such action. The payment originally due shall be paid to the commission, and credited to the fund and to the defaulting employer's account.

Sec. 24. Bankruptcy.

In the event of an employer's dissolution, bankruptcy, adjudicated insolvency, receivership, assignment for benefit of creditors, judicially confirmed extension proposal or composition, or any analogous situation, claims for benefits and amounts due under this act or to a fund or reserve under any approved voluntary or exempted unemployment benefit plan and any reserve or security duly required by the commission under any approved voluntary or exempted employment plan shall have preference over all other claims against the employer, and in this connection shall be considered to be wages, but this section shall not impair the lien of any judgment entered upon any award.

Sec. 25. Penalties.

(1) Any person who willfully makes a false statement or representation to obtain any benefit or payment under the provisions of this act, either for himself or for any other person, or to lower any contribution required of him, and any employer who makes a deduction from the wages of any employee in order to pay any portion of the contribution required of such employer under this act, shall upon conviction be deemed guilty of a misdemeanor and be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment; and each such false statement and each such deduction from wages shall constitute a separate and distinct offense.

(2) Any employer who willfully refuses or fails to pay any contribution required of him under this act, and any person who willfully and unlawfully fails or neglects to appear or to testify or to produce books, papers and records, as lawfully required at any hearing under this act shall upon conviction be deemed guilty of a misdemeanor and be fined not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned in the county jail not longer than thirty days, or be punished by both such fine and imprisonment; and every day of such refusal, failure or neglect shall constitute a separate and distinct offense.

(3) On complaint of the commission the fines specified in this section may be collected by the State in an action for debt.

(4) Any employer (of any person in New Jersey) or his agent who willfully makes a false statement or representation to avoid becoming or remaining subject hereto, or who willfully refuses or fails or neglects to furnish any reports duly required by the commission hereunder, or who tries to induce any employee to waive any rights under this act, shall upon conviction be deemed guilty of a misdemeanor and be fined not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned in the county jail not longer than thirty days, or be punished by both such fine and imprisonment; and each such false statement and every day of such refusal, failure or neglect, and each such attempt to induce shall constitute a separate and distinct offense.

(5) Any violator, of any provision of this act, found guilty of a violation for which a penalty is neither prescribed above nor provided by any other applicable statute, shall upon conviction be punished by a fine of not less than ten nor more than fifty dollars, or by imprisonment in the county jail not longer than twenty days, or by both such fine and imprisonment.

Sec. 26. Use of Unemployment Reserve for Public Works.

(1) If the State or any of its political subdivisions during a period of unemployment either directly or through a contractor provides work which in the opinion of the commission is an unemployment relief measure and which conforms to standards of wages and conditions prescribed by the commission, such work shall be deemed suitable employment within the meaning and subject to the limitations of subsection (6) of section four; provided, that an employee who accepts such work for any calendar week in which he would otherwise be totally unemployed and eligible for benefits shall be entitled to receive such benefits in the form of wages paid him for such governmental work. To this end the State or subdivision giving such work and wages to such employee in any calendar week shall receive his benefits for such week, for the purpose of partially financing such employee's work and wages on such governmental unemployment relief project.

(2) Benefits payable under this section to an employee in the form of wages from this State or a political subdivision for work on a relief project shall cease, as provided in subsection (6) of section four, for any period after such employee has without good cause failed to apply for suitable employment other than such governmental work when notified, or has refused to accept suitable employment other than such governmental work when offered him.

(3) Any employer, by filing suitable notice with the commission, may contract out from the provisions of this section for future periods specified in such notice and approved by the commission.

(4) If an employee is employed directly by a governmental unit on an unemployment work relief project approved by the commission under this section, that fact and such employment shall not under this chapter prevent the employee from receiving (in the form of wages for such governmental work) the benefits for total unemployment otherwise payable to him (in addition to any other wages paid him by the governmental unit for such employment).

Sec. 27. Vocational Education.

When any employee is unemployed and eligible for benefits under this act, he may be recommended by the superintendent of the district employment office to attend vocational or other school during his unemployment. If he attends school under conditions approved by such superintendent and does satisfactory work in his classes he shall be eligible for an additional benefit of one dollar per week, to be paid from the administration fund. The education shall be furnished at public expense and any fee which may customarily be charged for attendance at such classes must be paid by the town, village or city in which such employee resides.

Sec. 28. Separability of Provisions.

If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

Sec. 29. Saving Clause.

The Legislature reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this act or by acts done pursuant hereto shall exist subject to the power of the Legislature to amend or repeal this law at any time.

Sec. 30. This act shall take effect immediately, but shall cease to be in effect if either or both of Titles III and IX of the Federal Social Security Act ceases to be operative in New Jersey because declared invalid by the Supreme Court of the United States or repealed by the Congress of the United States or for any other cause. If and when this act shall cease to be operative as aforesaid, all liability on the part of any employer to make further contributions under this law shall immediately cease and the payment of benefits hereinunder shall likewise cease, and all moneys and funds, rights and credits in the unemployment fund shall be forthwith liquidated by the commission and distributed among employers in proportion to the credit balance in their respective reserve accounts.

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